

TERMS AND CONDITIONS OF SALE

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1. Acceptance of Terms.

Seller's acceptance of Buyer's order is expressly conditioned upon Buyer's assent to these terms and conditions and Seller's order acknowledgment and/or invoice (collectively, the "Agreement") notwithstanding the provisions contained in any purchase order, acknowledgment or other document of Buyer. Seller's failure to object to conflicting or additional terms in Buyer's documents will not modify or add to the terms of this Agreement. Each delivery by Seller of the products, materials, goods and equipment sold by Seller hereunder (the "Goods") shall be deemed to be solely upon the terms and conditions of this document; provided, however, that any conflicting provisions of a separate written contract or a written amendment to this document signed by an authorized representative of Seller shall control.

2. Prices.

The prices of the Goods are those stated on the invoice or, if not stated, Seller's current prices in effect on the date of order by Buyer. Price quotations shall automatically expire thirty (30) days from the date issued, or as otherwise stated in the quotation.

3. Payment Terms.

All prices for Goods are payable in U.S. currency in cash or via Electronic Funds Transfer at time of delivery except to the extent credit is extended, in which case terms are as stated on the invoice. If credit is extended and Buyer's ability to pay is at any time unsatisfactory to Seller or if Buyer fails to make any payment due Seller, advance cash payment shall be made or satisfactory security given on Seller's demand. Cash discounts, if any, are not applicable to taxes, insurance or freight. Seller has the right to assess a late payment charge of the lesser of 1.5% per month or the maximum amount allowed by law, to be prorated daily. In the event Buyer fails to make timely payment of any monies due and owing to Seller, Seller may set off, withhold or recoup any payments due under this or any other agreement between the parties.

4. Taxes.

Buyer shall pay any sales, use, value added, excise or other tax or levy imposed on the production, sale or transport of any Goods, in addition to the purchase price.

5. Security Interest.

As security for payment of the purchase price of the Goods, or for any credit extended by Seller to Buyer, Buyer hereby grants to Seller a security interest in all rights, title and interest of Buyer in and to the Goods and any products or proceeds thereof. Buyer agrees to execute, upon Seller's request, such other security agreements, financing statements and other documents necessary to give Seller a perfected security interest with respect to all Goods purchased by Buyer and any products or proceeds thereof.

6. Delivery; Title; Risk of Loss; Insurance.

Unless otherwise specified on the invoice, all deliveries by Seller shall be made (i) in the case of sale to a Buyer within the continental U.S., "F.O.B. Seller's place of business in Oakwood, Georgia," and (ii) in the case of all other sales, "FCA Seller's place of business in Oakwood, Georgia" (as defined in INCOTERMS 2000), and in each case, title (subject to payment by Buyer for the Goods) and risk of loss and damage shall pass to Buyer upon Seller's placing of the Goods in the possession of the carrier. Identification of the Goods shall occur upon their placement in the possession of the carrier. Unless otherwise specified on the invoice, Seller may select the carrier and the routing of the shipment and Buyer shall be responsible for payment of all costs of freight, transport, storage, insurance, customs and all other charges or incidental expenses of the carrier or any other person in connection with the Goods. Buyer shall insure the Goods against "all risks", subject to normal exclusions, from the time risk of loss passes to Buyer and until all amounts payable by Buyer in respect of the Goods are paid to Seller, with loss payable to Seller as the Seller's interest may appear. Seller may require proof of such insurance satisfactory to Seller prior to shipment or Seller may, but is not obligated to, procure such insurance at Buyer's expense.

7. Delivery and Delays.

The shipping dates communicated to Buyer are approximate. In addition, Seller shall not be liable for failure to deliver or delay in delivery, or other failure or delay in performance which is excused by Force Majeure, nor for any delay or failure to perform of any carrier.

8. Cancellation.

All orders are firm and Buyer agrees that an order is not subject to cancellation except as agreed by Seller in writing.

9. Limited Warranty.

Seller warrants that the Goods sold hereunder shall meet Seller's specifications at time of delivery. **OTHER THAN THE FOREGOING, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, NO WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE GOODS FOR ANY PARTICULAR USE OR OTHERWISE, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESS AND SELLER FURTHER EXCLUDES ALL WARRANTIES WHICH MIGHT OTHERWISE ARISE FROM COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE.**

If technical assistance or advice is provided to Buyer, such assistance or advice is given free of charge and only as an accommodation to Buyer. Buyer releases Seller from any liability for the content or for Buyer's use of such technical assistance or advice, and no statement made by any of Seller's representatives in connection with the Goods shall constitute a representation or warranty, express or implied. Technical and chemical information on the Goods do not guarantee specific properties of such Goods.

10. Acceptance.

Buyer agrees to promptly inspect the Goods upon receipt. Goods will be deemed to have been irrevocably accepted by Buyer and any claim for non-conformity of the Goods waived upon the first to occur of (i) any act of Buyer inconsistent with Seller's ownership of the Goods or (ii) the lapse of ten (10) days from the date of receipt of the Goods and failure by Buyer to properly and in writing reject such Goods and allow Seller the opportunity to verify such claim. If Buyer has rightfully rejected or revoked acceptance, Buyer's sole remedy shall be at Seller's option, either to replace non-conforming Goods or to refund the purchase price, and in either case Buyer shall return the non-conforming Goods to Seller at Seller's expense.

11. Limitation of Liability.

NOTWITHSTANDING ANY OTHER PROVISION HEREIN AND REGARDLESS OF THE CIRCUMSTANCES, SELLER'S TOTAL LIABILITY TO BUYER, ITS EMPLOYEES, AGENTS AND CUSTOMERS FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER, WHETHER BASED IN CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS IN RESPECT TO WHICH SUCH CAUSE AROSE. IN NO EVENT SHALL SELLER BE LIABLE TO ANY PERSON FOR LOST PROFITS OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. Any cause of action that Buyer may have against Seller arising from the sale of Goods hereunder must be commenced within one (1) year after the cause of action has accrued.

12. Force Majeure.

Neither party shall be liable to the other for failure or delay in performance to the extent that such failure or delay is due to war, fire, flood, strike, lockout or other labor trouble, accident, breakdown of equipment or machinery, riot, act or request of governmental authority, act of God, non-delivery or delayed delivery by suppliers, difficulty sourcing raw materials, or other contingency beyond the control of the affected party, which interferes with the production or delivery of the Goods or other aspect of performance, provided that in no event shall Buyer be relieved of the obligation to pay in full for Goods received. The affected party shall use reasonable efforts to remedy the force majeure event. The party affected by an event of force majeure shall give prompt written notice to the other party of the occurrence of such event.

13. Allocation.

Seller shall have the right to allocate Goods in accordance with § 2-615 of the Uniform Commercial Code of the State of Georgia (the "UCC").

14. Specification Changes; Discontinuance.

Seller may in its discretion change or alter the quality or specifications of any Goods or discontinue the manufacture of any Goods. If in the opinion of Seller such change or alteration will materially affect the performance of the Goods, Seller will give Buyer thirty (30) days' written notice and Buyer may cancel any contract of which these terms and conditions are a part as to such Goods(s).

15. Solvency.

Buyer represents upon entering into this Agreement that Buyer is not insolvent as defined in § 1-201(23) of the UCC.

16. Seller's Remedies.

Buyer shall be in breach of this Agreement if Buyer fails to comply with any of the terms hereof or if Buyer fails to accept and pay for any delivery of conforming Goods. In the event of Buyer's breach by nonpayment, Seller shall have the right of immediate possession of the Goods (including by self-help and without instituting any judicial or other proceedings) and all other rights and remedies of a seller and a secured party under the UCC. Upon Buyer's breach, Seller's rights and remedies hereunder and at law or in equity shall be cumulative, and Buyer shall be liable for and pay Seller's actual, incidental and consequential damages from Buyer's breach, and Seller's reasonable attorneys' fees and other costs incurred in enforcing Buyer's obligations. Seller shall be entitled to apply all monies paid by Buyer on account in partial satisfaction of Seller's damages and costs, but without waiver of Seller's right to recover its damages in full.

17. Termination.

In the event that Buyer breaches this Agreement or Seller determines that Buyer is insolvent or dissolved or otherwise ceases to carry on its business, Seller may, at its option, terminate this Agreement upon written notice and shall be relieved of all obligations hereunder.

BARBE AMERICA, INC.

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18. Buyer's Remedies.

Upon Seller's failure, if unexcused by Force Majeure, to effect timely delivery or to deliver conforming Goods or to deliver at all, Buyer, under exclusion of any other rights, remedies or damages at law or in equity, may either cancel the order or, if the Goods have been delivered, return the Goods at Seller's cost and receive reimbursement of the purchase price paid for the Goods. Buyer's claim for damages for breach by Seller shall be limited to the invoice amount for the quantity of Goods affected, and Buyer expressly waives any claim or right to recover any other incidental, actual, consequential or other damages.

19. Buyer's Indemnity.

Seller shall make available to Buyer Material Safety Data Sheets for the Goods and may also furnish other warnings or instructions for use, including on the packaging of the Goods, and Buyer agrees to communicate this information to all persons Buyer can reasonably foresee may be exposed to such materials, including but not limited to Buyer's employees, agents, contractors and customers. Buyer agrees to defend and indemnify Seller from and against any liability, claims and causes of action whatsoever arising out of or connected with any failure of Buyer to communicate such information, instructions or warnings or to follow instructions for use of the Goods.

20. Intellectual Property Rights.

Buyer agrees to cooperate in measures taken by Seller to protect Seller's (or Seller's licensor's) proprietary rights in the Goods; provided, that Seller makes no representation or warranty of non-infringement of any third party patent or other intellectual property rights. Exclusive ownership of all intellectual property rights in and relating to the Goods or any specifications or samples, including all "know-how," patents, formulae, trade secrets and other property rights, shall remain with Seller (or Seller's licensor) and does not pass to Buyer. Buyer shall not reproduce, reverse engineer or disclose to any third party, any portion of such formulae, trade secrets or other intellectual property of Seller. Information disclosed to Buyer in connection with the Goods, which is not already in the public domain, shall be deemed to be confidential and proprietary to Seller unless otherwise expressly agreed in writing by Seller.

21. Severability.

Should any term of this Agreement be held to be illegal, invalid or unenforceable for any reason by a court of competent jurisdiction, it is the parties' intent that such term shall be reformed, as necessary in order to be enforceable to the maximum extent permitted by law, and this Agreement shall continue in full force and effect.

22. Applicable Law; Forum.

This Agreement is deemed to be a contract made in the state of Georgia and shall be governed by and construed in accordance with the laws of the state of Georgia without reference to its conflict of laws rules. The Convention on Contracts for the International Sale of Goods shall not apply. Any action or proceeding arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the Hall County Superior Court or the Federal District Court for the Northern District of Georgia. The parties specifically consent and submit to the jurisdiction and venue of such courts and irrevocably waive any objections based on improper venue or forum non conveniens.

23. Miscellaneous.

This Agreement between Buyer and Seller may not be assigned in whole or in part by Buyer or Seller without the written consent of the other party, except that Seller may upon written notice to Buyer assign its obligations under this Agreement to an affiliate of Seller. No waiver by either party of any breach of any of these terms and conditions shall be construed as a waiver of any succeeding breach of the same or any other term or condition.