

## COTSWORKS' Standard Terms and Conditions of Sale

**1. AGREEMENT.** These Standard Terms and Conditions shall apply to all offers made by COTSWORKS and its affiliates, whether located in the U.S. or elsewhere (hereinafter referred to as the "Seller"), and all contracts (each hereinafter referred to as a "Contract") made between the Seller and any person, firm, or entity (hereinafter referred to as the "Buyer") purchasing products, material, parts, and services (hereinafter "Products") from the Seller. These Standard Terms and Conditions, together with the terms of any quotation, confirmation, or invoice given by the Seller shall constitute the entire agreement between the Seller and the Buyer with respect to the sale and delivery of the Products and the performance of any work by the Seller, and no variation or waiver or addition to these Standard Terms and Conditions shall be binding unless expressly confirmed by the Seller in writing. These Standard Terms and Conditions shall have precedence over and be preferred to any conditions appearing on the Buyer's purchase order document or other documents emanating from the Buyer and any such Buyer's conditions shall be of no force and effect unless expressly accepted in writing by the Seller. No person has authority to make any representations on the Seller's behalf and the Buyer shall not rely on any representation unless made or confirmed in writing by the Seller. Each and every affiliate of the Seller shall be a beneficiary of these Standard Term and Conditions and entitled to enforce them.

**2. OFFERS AND ORDERS.** Unless previously withdrawn, Seller's offer is open for acceptance within the period stated therein, or when no period is stated, within thirty (30) days from the date thereof. Any purchase order received by the Seller, whether in response or not to such offer, and any agreement and contractual change shall only be binding on the Seller at such time as the Seller gives to the Buyer its written acceptance thereof. All price lists, brochures, and other literature are as accurate as possible. They shall only be binding on the Seller if they are expressly confirmed in writing. In the event of any variations in the order requested by the Buyer and accepted by the Seller, the Seller shall be entitled to charge the Buyer all additional costs and expenses incurred by the Seller in connection therewith and the Seller may set a new delivery date; all subject to payment by the Buyer for the work already performed by the Seller. No order for the Products may be cancelled by the Buyer without the written consent of the Seller. The Buyer shall indemnify the Seller against all costs incurred by the Seller in connection therewith.

**3. PRICES.** Prices shall be quoted for delivery of the Products to the agreed location in US Dollars. The price shall include Seller's standard packing and any special packing shall be charged to the Buyer. Prices quoted relate to the stipulated quantity only.

The quoted prices are based on the costs of materials and labor prevailing on the date of quotation. Unless otherwise agreed in writing, if before the date of actual delivery variations occur in the above-mentioned costs, the Seller shall be entitled to revise the prices quoted to provide for such variations. In the event of a change or an introduction by any governmental regulations of any taxes, levies, or import duties, the Seller shall be entitled to pass on to the Buyer the price increase resulting thereof. All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income.

**4. PAYMENT.** Unless otherwise agreed in writing, all accounts are strictly net and are due for payment within thirty (30) days following dispatch of the Products or, where applicable, the date on which the Products are available for collection. Interest on late payment will be charged to the Buyer at a rate of three percent (3.0%) a month (or part month) on the amount still outstanding as of the original invoice due date. In addition, all costs, expenses (legal, judicial, or otherwise) incurred by the Seller in recovering the sums due shall be fully borne by the Buyer.

If the Buyer fails to effect payment on the due date, the Seller reserves the right, in addition to any other legal rights and remedies available to it, to suspend further deliveries of Products until such time as payment is received from the Buyer or to terminate the Contract. Should the Contract be terminated by the Seller, the Buyer will be liable to

the Seller for the cost of all Products actually delivered or completed and ready for delivery. The Seller further reserves the right to claim the fair and reasonable price for partly completed Products based on manufacturing costs up to the date of termination.

If the Buyer fails to take delivery of the Products under any Contract within eight (8) days of the date of notification that they are ready for delivery, the Seller shall have the right to invoice for payment at any time after the expiry of said period and payment shall be due thereon as if delivery had been made.

The Seller reserves the right at any time, even in the course of performance of the Contract, to require the Buyer to furnish a guarantee of payment whose terms shall be agreed upon in writing by the Seller. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller.

If the event that Buyer makes an assignment for the benefit of creditors, files a petition in bankruptcy, or is adjudicated bankrupt or insolvent, or has a receiver or trustee in bankruptcy appointed to all or part of its assets, or if any action is taken to dissolve, liquidate, or wind up the Buyer, the Seller shall have the right to terminate upon written notice and with immediate effect the Contract, without prejudice to its rights to claim compensation for all costs and damages incurred by the Seller in connection therewith.

**5. RESERVATION OF TITLE.** Title to any Products sold under any contract shall not pass to the Buyer until the Seller has received payment in full of all sums invoiced together with any interests accrued thereon and other charges. Until that time, the Seller shall remain the full legal and beneficial owner of the Products and the Buyer shall hold any proceeds of sale of the Products as trustee or as bail for the Seller free from any charge, lien, or other encumbrance. The Buyer agrees that it will assign to the Seller (upon the Seller's request) all of its rights under a contract of sale against any subsequent buyer of the Products or any of them or of the equipment in which the Products have been incorporated. Until such time as title to the Products passes to the Buyer or until such time as the Products are sold, the Buyer shall keep the Products fully insured with a reputable insurer and shall store them in such a way so they can be readily identified as being the Seller's property. The Seller has the right to recover possession of all or any of the Products or to seize any of the Products at any time and is entitled to enter upon any of the premises of the Buyer for the purpose of doing so. If the Buyer makes an assignment for the benefit of creditors, is adjudicated bankrupt or insolvent, has any proceedings commenced against it for reorganization, readjustment of debt, dissolution or liquidation, or has its business wound up, the Seller shall be entitled to claim back as its property any Products delivered but not yet paid for or not paid for in full, without prejudice to its rights to demand compensation for any losses or damage resulting thereof.

**6. DELIVERY.** Unless otherwise agreed in writing, all deliveries of Products shall be made Ex Works of Seller's factory (Incoterms 2018). All risks of loss or damage to the Products shall pass from the Seller to the Buyer when the Products are delivered to the Buyer in accordance with the agreed trade term as defined. The Seller may make deliveries in installments which will be invoiced individually. The Buyer will make payment in accordance with clause 4 of these Standard Terms and Conditions.

Times specified for delivery of the Products are given and intended as estimates only unless otherwise agreed in writing. Where a firm time for delivery has been expressly agreed upon, no delivery shall be considered overdue until the Buyer has made a written request for delivery and given the Seller a reasonable opportunity to comply therewith. The Buyer shall have the right to cancel the Contract by serving written notice to the Seller if the Seller is unable, due to circumstances for which it is fully responsible, to comply with the extended or postponed delivery time and the Buyer has stated in writing when agreeing to the new delivery time that it will refuse to take delivery if the new delivery date is not met. In no event shall the Seller be liable for indirect, special, consequential, or punitive damages arising out of or in connection with the late delivery of the Products.

The Buyer shall inspect or have inspected the Products delivered and shall notify the Seller in writing of any discrepancy regarding the quantity, specification, or quality of the Products to the order within fourteen (14) days of receipt of the Products. Once this time period has elapsed, the Buyer shall be deemed to have accepted the Products. If Buyer timely notifies Seller of any nonconforming Products, the Seller shall replace incorrect Products and deliver additional Products to meet the ordered quantity. The foregoing shall be Buyer's exclusive remedy

with respect to nonconforming Products. The Buyer shall not return any Products without the prior written permission of the Seller. Submitting a claim shall at no time release the Buyer from its obligations under the Contract.

**7. SELLER WARRANTY.** COTSWORKS' (SELLER's) Limited Warranty forms an integral part of these Standard Terms and Conditions of Sale and can be found at [www.cotsworks.com](http://www.cotsworks.com). SELLER makes this Limited Warranty to Buyer as the original customer only (not any lessees, transferees, or assignees). SELLER disclaims all warranties other than as expressly set forth in the Limited Warranty.

**8. MANUFACTURER'S WARRANTIES; NON-SELLER PRODUCTS.** Buyer acknowledges that unless it is purchasing a Seller Product described in the immediate preceding paragraph, only the warranties offered by the manufacturer are available. In purchasing such a product from Seller, Buyer agrees to rely upon the manufacturer's specifications and warranties and is not relying upon any statements, specifications, illustrations, photographs, or other document provided by the Seller. Buyer has familiarized itself with the manufacturer's warranty prior to purchasing the product from Seller and understands that warranty claims must be presented directly to the manufacturer and not to the Seller.

**9. TOOLING.** All tools, molds, and fixtures which are developed by the Seller under the Contract or made by the Seller under any purchase order from the Buyer shall at all times remain the exclusive property of the Seller.

**10. CONFIDENTIALITY.** All parties to the Contract shall maintain in strict confidence and shall not, without the other party's prior written authorization, disclose to third parties any documents and confidential information designated by the furnishing party as confidential and furnished to the other party pursuant to the Contract. The receiving party shall not use the other party's confidential information for any other purpose than the performance of the Contract. Neither party shall be liable for disclosing any confidential information if it is known or becomes known to the general public other than through an act of negligence by the receiving party. Upon termination of the Contract either party shall return to the other party all confidential information which is in its possession. The Buyer shall not make any advertisement, publicity, or communication regarding the Contract or the Seller's relationship with the Buyer without the Seller's prior written consent. The parties' obligations under this Clause shall survive the termination of the Contract.

**11. WAIVER.** Any waiver of any provision of these Standard Terms and Conditions of Sale, or a delay by either party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an exception of non-enforcement of that or any other provision or right. If any provision of these Standard Terms and Conditions of Sale is determined illegal or unenforceable by any court of competent jurisdiction, such provision shall be deemed separable from the remaining provisions of these Terms and Conditions and shall not affect or impair the validity or enforceability of the remaining provisions.

**12. NOTICES.** Any notice required to be given under these Terms and Conditions must be in writing and is effective upon delivery by certified mail or confirmed facsimile transmission to the other party at the address identified in the Order.

**13. EXPORT CONTROL.** Products and technical data acquired under these Terms and Conditions are subject to U.S. and other government export control laws and regulations, including but not limited to the Arms Export Control Act (22, U.S.C., Sec 2751, et seq.) and the associated International Traffic in Arms Regulation (22 CFR 120-130), the Export Administration Regulations, 15 CFR 730-774, and sanction programs administered by the U.S. Treasury Department's Office of Foreign Assets Control, each as amended from time to time (collectively, the "Export Control Laws and Regulations"). Buyer agrees that it will comply with the Export Control Laws and Regulations in their handling, use, and disposition of the products and related technical data, including in connection with any retransfer or re-export of the products and information obtained from the Seller pursuant to these Terms and Conditions. The products and associated information transferred in accordance with these Terms and Conditions are authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person, entity, or organization other than the authorized ultimate consignee or end-user(s), either in their

original form or after being incorporated into other items, without first obtaining approval as required under the Export Control Laws and Regulations and any other applicable U.S. laws and regulations.

**14. FORCE MAJEURE.** Neither party shall be liable for the failure to perform any of its obligations under these Terms and Conditions if such failure is caused by the occurrence of any act of force majeure or any other contingency beyond its reasonable control. The Seller shall promptly notify the Buyer of the occurrence of the force majeure event with the indication of the scope and effect. The performance of the Seller's obligations shall be suspended for the term of the force majeure event. Should the force majeure event last for more than sixty (60) days from the date of the excused performance due date, the Buyer shall be entitled to terminate the Contract with fifteen (15) days prior written notice.

**15. ASSIGNMENT.** The Buyer shall not assign the Contract in whole or in part to any third party.

**16. APPLICABLE LAW AND ARBITRATION.** This Order shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to the conflict of laws provisions of that or any other jurisdiction. The Convention on the International Sale of Goods shall not apply. Each party agrees that any dispute between the parties will first be submitted in writing to the designated senior executives of the Seller and the Buyer who will meet in an effort to resolve such dispute within thirty (30) days. Any dispute, claim or controversy arising out of or relating to this Order or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Cleveland, Ohio before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, and Seller and Buyer each submit to the exclusive jurisdiction of federal and state courts located in Cuyahoga County, Ohio for such purpose.

**17. INDEMNITY.** The Buyer shall indemnify and hold the Seller harmless from any liabilities, claims, costs (including reasonable attorney's fees), expenses, and damages in connection with the infringement by the Seller of a third party's patent, copyright, or other intellectual property right which arises from the Seller's compliance with the Buyer's design or specifications.

**18. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE EQUIPMENT (WHETHER EXPRESS OR IMPLIED) ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY THE SELLER, ITS LICENSORS OR REPRESENTATIVES, OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE AND CONFORMITY TO MODELS OR SAMPLES, OR WARRANTY OF NON-INFRINGEMENT) ARE HEREBY OVERRIDDEN, EXCLUDED, AND DISCLAIMED.

THIS DISCLAIMER DOES NOT APPLY TO THE MANUFACTURER'S WARRANTY, IF ANY.

**19. SPECIAL LIMITATIONS.** THE SELLER DOES NOT WARRANT THAT THE PRODUCTS IT SELLS WILL WORK IN ALL COMBINATIONS OF HARDWARE AND SOFTWARE SELECTED FOR USE BY THE BUYER AND THE SELLER MAKES NO WARRANTY FOR THE DESIGN, FUNCTIONALITY, OR PERFORMANCE OF ANY INTEGRATED SYSTEM CREATED USING THE SELLER'S PRODUCT.

COTSWORKS CURRENTLY PROVIDES TRACEABILITY TO THE FINAL ASSEMBLY LEVEL.

**20. CONSEQUENTIAL DAMAGES.** WITH THE EXCEPTION OF CLAIMS FOR DEATH OR PERSONAL INJURY, IN EACH CASE WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY, UNDER NO CIRCUMSTANCES WILL THE SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON THE BUYER'S CLAIMS OR THOSE OF ANY THIRD PARTIES (INCLUDING,



BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, LOSS OF PRODUCTION, GOODWILL, LOST PROFITS, USE OF MONEY OR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK, OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY WHICH THE SELLER MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE GREATER OF THE TOTAL AMOUNT ACTUALLY PAID BY BUYER FOR THE SPECIFIC PRODUCT THAT DIRECTLY CAUSED THE DAMAGE OR \$25,000.

**21. CONTRACT TERMS.** The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof except as specifically set forth herein and each of the parties hereto acknowledges that he or it has relied on his or its own judgment in entering into the same.

