

## Terms of Sale

Last updated: December 16, 2016

PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS. THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS. IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT ORDER/KEEP YOUR PRODUCT(S).

### 1. Applicability And Contract

- A. These Terms of Sale apply to customer's purchase of products from Allen Field Company, Inc. ("Allen Field", "us", or "we"). Customer agrees to these terms by placing an order. When customer places an order, customer will receive an acknowledgement e-mail confirming receipt of the order – this e-mail will only be an acknowledgment and will not constitute acceptance of the order. A contract between the customer and Allen Field will not be formed until Allen Field sends a confirmation (by e-mail) that the Products ordered are available.
- B. If after the order has been placed, customer no longer wants to be bound to this Agreement, then customer must either promptly cancel the order or return the products purchased in accordance with our return policy as set forth below. Please act promptly and note that these options may carry restocking or other fees.

### 2. Terms Of Sale

- A. Allen Field accepts checks, wire transfers, ACH, and all major credit cards.
- B. Credit Terms
  - i. For customers with established Allen Field credit, payment terms are net thirty (30) days from the date of invoice creation, unless otherwise specifically agreed upon in writing.
  - ii. All credit extended by Allen Field and the limits of such credit, is at Allen Field's sole discretion, and may be reduced or revoked by Allen Field at any time, for any reason.
  - iii. Allen Field may suspend performance or require cash payment, of adequate security, when, in Allen Field's sole judgment, customer's financial conditions or other reasonable grounds for insecurity warrant such action.
  - iv. All sales based on credit terms are subject to the approval of Allen Field's credit department.
  - v. As a condition for the continued extension of credit, customer agrees to provide Allen Field with current credit information and the latest annual financial statement within five (5) business days following a request by Allen Field.
- C. Allen Field reserves the right to charge a convenience fee for any late payments. Allen Field further reserves the right to charge customer a finance charge equal to the highest amount allowed by law on any invoice that is not timely paid. Anticipation and cash discounts are not allowed.
- D. All payments must be made in U.S. dollars. Allen Field has the reserves the right to set-off any deduction for any sums owed by the customer to Allen Field.
- E. If the customer fails to make payment in accordance with their payment or credit terms, or fails to supply adequate assurance of full performance to Allen Field within a reasonable time after requested by Allen Field (such time as specified in Allen Field's request), Allen Field may defer shipments until such payment or compliance is made; require cash in advance for any further shipments; demand immediate payment of all amounts then owed; charge customer's credit (or debit) card on file for any past due amount that is fifteen (15) days beyond the customer's terms; elect to pursue collection action (including without limitation, attorneys' fees and any and all other associated costs of collection); and/or may, at its option, cancel all or any part of an unshipped order.
- F. Customer, and each of its subsidiaries and affiliates, agrees to provide to Allen Field proper authorization necessary for Allen Field to request any financial information from third parties.
- G. Customer agrees to assume responsibility for, and customer hereby unconditionally guarantees payment of, as provided herein, all purchases made by customer, its subsidiaries and affiliates. Each of customer's subsidiaries and affiliates purchasing from Allen Field are jointly and severally liable for purchases by customer, and customer is also acting as agent for such subsidiaries and affiliates.

H. Customer is responsible for payment of all applicable state and local taxes, or for providing a valid sales tax exemption certificate. When placing an order, Customer shall indicate which products are tax exempt.

### 3. Freight Policy

- A. Shipment terms are F.O.B. place of shipment, freight prepaid to destination specified in the order. Allen Field charges a shipping and handling fee (which includes internal handling and related costs), on each order which is applied at the time of the order and reflected on the customer's invoice.
- B. Other terms and conditions may apply for any shipping method other than standard ground delivery, including without limitation: expedited same day delivery, air freight, freight collect, export orders, hazardous materials, customer's carrier, shipments outside the contiguous United States, or other special handling by the carrier. Any charges incurred by Allen Field must be paid by the customer.
- C. Product title and risk of loss pass to the customer once Allen Field has delivered the product(s) to the carrier.

### 4. Information About Our Products

- A. Allen Field tries to ensure all descriptions of products and listed prices are accurate and correct. However, mistakes do happen and Allen Field will try to resolve any errors in information as soon as reasonably possible and if Allen Field thinks that such an error has affected an order, Allen Field will make all reasonable efforts to notify the customer via the contact information provided and give customer the option of reconfirming the order at the correct price or description (as applicable) or cancelling it. If Allen Field is unable to contact the customer, then Allen Field may treat the order as cancelled. If customer cancels and has already paid for the products, the customer will receive a refund via their method of payment.
- B. Customer acknowledges and agrees that the colors of products as shown on the Website will depend on many factors, including customer's own display settings and device.

### 5. Purchase and Delivery

- A. Customer agrees to purchase the product(s) from Allen Field at the price(s) specified by Allen Field on the date the customer places the relevant order, including any shipping price(s).
- B. Allen Field provides quotes upon request, free of charge. All clerical errors are subject to correction by Allen Field. Until Allen Field accepts an order, quoted prices are subject to change without notice. All quotations, unless otherwise stated, are for immediate acceptance. All order and contracts are subject to acceptance at Allen Field's home office in Brightwaters, New York.
- C. Unless otherwise specifically specified by Allen Field, the published prices applicable to the products are exclusive of shipping prices, which will be separately d during the checkout process. All published prices applicable to the products are also exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any government authority on any amounts payable to customer. Customer will be responsible for all such charges, costs and taxes.
- D. During the ordering process, customer will explicitly state the method of shipment preferred. In the absence of shipping directions, Allen Field will use its discretion.
- E. Every effort will be made by Allen Field to fulfill all contracts within the time stated on the contract and agreed upon by the parties. Allen Field assumes no liability for loss or damages, including consequential damages, due to any delays in delivery.
- F. When placing an order for products, customer is responsible for ensuring that: all details provided to Allen Field are true and accurate; that customer is an authorized user of the credit or debit card or such other authorized payment account used to place the order; and that there are sufficient funds to cover the cost of the products.

### 6. Cancelling An Order And Returning Products

- A. Customer may cancel their order before it has shipped by submitting a cancellation request to: [sales@allenfield.com](mailto:sales@allenfield.com). Such request is considered by Allen Field on a case-by-case basis and at their sole discretion.
- B. If customer is not satisfied with the products they receive, customer may submit a written request to return the products within thirty (30) days of the invoice date to: [sales@allenfield.com](mailto:sales@allenfield.com). Such request is

considered by Allen Field on a case-by-case basis and at their sole discretion.

- C. If approved, customer will be provided with a return authorization number, which must be noted on all returning paperwork. No refund or credit will be issued for unauthorized returns.
- D. All returned products must be in new and unused condition and must be returned to Allen Field within ten (10) days of the return authorization number being issued. Allen Field is not responsible for lost or damaged products in transit.
- E. All returns are subject to a restocking fee equal to 25 percent of all materials and services invoiced.
- F. After Allen Field has received the returned product and reviewed it for compliance with all return-requirements, Allen Field will refund customer the price of the product less freight and the restocking fee, via the original payment method or such other method agreed to by the parties.
- G. Orders for custom goods or quantities (i.e.: not regularly stocked) may not be cancelled for any reason after Allen Field has purchased the raw material.

#### **7. Disclaimer Of Warranties And Limitation Of Liability**

- A. *EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THESE TERMS, ALLEN FIELD MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.*
- B. IN NO EVENT WILL ALLEN FIELD BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR IN CONNECTION WITH ANY BREACH OF THESE TERMS OR ANY ACT OR OMISSION BY ALLEN FIELD OR ITS PERSONNEL, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- C. No claim for damages, defects, shortages, or otherwise shall be valid unless made in writing and delivered to Allen Field within thirty (30) days of delivery of goods to the customer. In the event any of the goods are defective, Allen Field shall be allowed to inspect such goods, or upon request, be furnished with a sample of the goods. Allen Field is only liable to replace or credit or refund to the customer, at Allen Field's option, for any such defective goods.
- D. Inspection by Allen Field is made on a percentage basis only. If 100% inspection is required, it is at the customer's expense and only such parts proved to be defective may be returned with a claim for credit or replacement.
- E. In no event shall Allen Field be responsible to the Customer for damages that exceed the purchase price of the goods involved.
- F. Allen Field shall have no liability, whether in contract or tort (including but not limited to negligence and strict liability) for any injury, loss, damage, direct or consequential (as defined in UCC §2-715) or otherwise arising out of the sale of the goods hereunder or arising out of the use of the goods.
- G. Customer releases Allen Field from any and all liability for negligence with respect to any activity engaged in by Allen Field with respect to the goods sold hereunder and from all liability imposed on Allen Field under §402A of the Restatement of Torts or any similar theory.
- H. Customer acknowledges and agrees that the goods purchased from Allen Field meet the requirements for their intended use.
- I. It is not the intention of Allen Field to manufacture any product that is an infringement of a patented article. Allen Field makes parts strictly to dimensional specifications furnished by the customer. It is agreed that the customer will defend and hold harmless Allen Field from any and all expense involved in any claims for damages from patent infringement(s) resulting from the use or sale of parts made by Allen Field, either as parts or units of complete entities.

#### **8. Disputes with Allen Field**

- A. All matters relating to sale of goods and these Terms of Sale and any dispute or claim arising therefrom or related thereto will be governed

by and construed in accordance with the laws of the State of New York, without regard to its conflict or choice of law rules. These laws will apply regardless of customer's domicile or principal place of business.

- B. Allen Field is committed to resolving all disputes in a fair, effective and cost-efficient manner. We seek to resolve any customer concerns through our customer service department by calling 1-631-665-2782. However, if customer is dissatisfied with our customer service's resolution of the matter, any dispute or claim arising from or relating to the Terms of Sale shall be finally settled by arbitration, using the English language, administered by the American Arbitration Association under its Commercial Arbitration Rules then in effect (those rules are deemed to be incorporated by reference into this section). Arbitration will be handled by a sole arbitrator in accordance with those rules. Judgment on the arbitration award may be entered in any court that has jurisdiction. Any arbitration under the Terms will take place on an individual basis: class arbitrations and class actions are not permitted.

#### **9. Indemnification**

- A. Customer agree to indemnify, defend and hold harmless Allen Field Company, Inc., its officers, directors, employees, agents, licensors and suppliers from and against all losses, liabilities, expenses, damages and costs, including reasonable attorneys' fees, resulting from any violation of these Terms of Sale by customer or customer's agent.

#### **10. Force Majeure**

- A. *Allen Field will not be liable or responsible to customer, nor be deemed to have defaulted or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms, when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Allen Field, including acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage.*

#### **11. Changes to the Terms of Sale**

- A. Allen Field may revise and update these Terms from time to time in its sole discretion. All changes are effective immediately when Allen Field posts them, and apply to all purchases of products thereafter.
- B. Customer should check these Terms every time customer purchases a product so customer is aware of any changes. No other changes to these Terms will be binding or enforceable unless agreed in writing between each party's authorized representative.

#### **12. Severability and Waiver**

- A. If any term or provision of these Terms is held to be invalid, illegal or unenforceable in any jurisdiction, the invalidity, illegality or unenforceability will not affect any other term or invalidate or render unenforceable such term in any other jurisdiction.
- B. Delay in Allen Field's exercising or failure to exercise any right or remedy under these Terms will not constitute a waiver of Allen Field's rights and remedies under these Terms.

#### **13. Privacy**

- A. Personal information that customer provides during the order process will be kept and used by Allen Field in accordance with our Privacy Policy (which is deemed to be incorporated by reference into this section).

#### **14. Governing Terms**

- A. THE ABOVE TERMS SHALL GOVERN THIS SALE TRANSACTION AND SHALL SUPERCEDE ANY INCONSISTENT TERMS CONTAINED IN CUSTOMER'S PURCHASE ORDER, IF ANY.