

# FORCE America Distributing LLC

501 East Cliff Road, Burnsville, MN 55337

Phone: 952-707-1300

Fax (952) 707-1330



## FORCE AMERICA DISTRIBUTING, LLC. TERMS AND CONDITIONS

**Acceptance.** These Terms and Conditions shall govern all contracts for the sale of any goods to Buyer by FORCE America Distributing, LLC. and/or its subsidiaries and divisions (collectively "Seller"). These Terms and Conditions shall control over any conflicting terms and conditions set forth in any request for quotation, purchase order, confirmation or other transaction document submitted to Seller by Buyer.

**Delays in Delivery.** Seller shall not be responsible for any delay in delivery of goods to Buyer due to fires, strikes, riots, Acts of God, government orders or restrictions, delays in transportation, delays by suppliers of materials or parts, inability to obtain necessary labor or other causes beyond Seller's control. In the event of such delay, the delivery date shall be extended for a reasonable period of time.

**Damage or Loss in Transit.** All risk of loss shall pass to Buyer at the time of delivery of the goods. Delivery of the goods to any carrier shall constitute delivery of the goods to Buyer, regardless of which party retained or hired the carrier.

**Warranties.** Seller warrants that any goods sold by Seller to Buyer shall be free from defects in material and workmanship for a period of one (1) year from the date of delivery. THIS WARRANTY SHALL BE THE SOLE AND EXCLUSIVE WARRANTY MADE BY SELLER TO BUYER. SELLER HEREBY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Exclusive Remedy.** If within the aforementioned one-year warranty period, any goods sold by Seller are proven by Buyer to be defective to Seller's reasonable satisfaction, then such defective goods shall be repaired or replaced, at Seller's sole option. THIS REMEDY SHALL BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO BUYER. BUYER SHALL NOT, UNDER ANY CIRCUMSTANCES, BE ENTITLED TO RECOVER ANY INCIDENTAL, CONSEQUENTIAL OR CONTINGENT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS.

**Payment.** Buyer shall pay Seller's invoices within thirty (30) days of receipt. Buyer agrees to pay interest to Seller on any past-due amounts at the rate of 18% per year.

**Security Interest.** To secure payment of Seller's invoices, Buyer hereby grants Seller a security interest in all goods sold by Seller to Buyer. Buyer hereby authorizes Seller to file financing statements on behalf of Buyer to perfect Seller's security interest. In the event Buyer fails to timely pay Seller for any goods sold to Buyer, Seller may proceed, at its option, to utilize the remedies available to a secured party under Article 9 of the Uniform Commercial Code.

**Freight Terms.** All sales made by Seller to Buyer shall be F.O.B. Seller's Distribution Center.

**Returned Goods.** Goods may only be returned by Buyer with Seller's prior authorization and consent. Only unused goods in original containers of current design will be considered for return. Specially manufactured, custom or modified goods shall not be returnable. Buyer shall pay all transportation charges for any goods accepted for return by Seller. Buyer shall also pay a restocking charge equal to 15% of the original price of any goods accepted by Seller for return.

**Taxes and Other Charges.** Buyer shall be responsible for paying any taxes, duties, fees or other charges imposed by any governmental entity based upon Buyer's purchase of any goods from Seller.

**Legal Action.** These Terms and Conditions and the terms of any contract for the sale of goods by Seller to Buyer shall be governed by and construed in accordance with Minnesota law. Any action relating to or arising out of any contract for the sale of goods by Seller to Buyer shall be venued in state or federal court in Minnesota. Buyer consents to the personal jurisdiction of Minnesota courts and waives any defense that venue in Minnesota is in any manner inconvenient. Buyer shall pay all attorney fees, costs and disbursements incurred by Seller in collecting any amounts due from Buyer, enforcing these Terms and Conditions and/or enforcing the terms of any contract for the sale of goods by Seller to Buyer. Any legal action by Buyer against Seller relating to or arising out of any contract for the sale of goods by Seller to Buyer shall be brought within one (1) year after the delivery of the goods or be forever barred.