



VSMPO-Tirus, US  
Standard Terms and Conditions of Sale

ANY SALES ORDER ACKNOWLEDGEMENT PROVIDED BY VSMPO-TIRUS, US (THE "SELLER") IS MADE AND GIVEN ON THE EXPRESS UNDERSTANDING THAT THE FOLLOWING STANDARD TERMS AND CONDITIONS OF SALE (THE "TERMS") APPLY TO THE SALE OF SELLER'S GOODS. SELLER'S ACCEPTANCE OF ANY ORDER IS EXPRESSLY MADE CONDITIONAL UPON THE BUYER'S ACCEPTANCE OF THESE TERMS. SELLER'S ACCOMPANYING INVOICE AND THESE TERMS (COLLECTIVELY, THIS "AGREEMENT") COMPRISE THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND SUPERSEDE ALL PRIOR OR CONTEMPORANEOUS UNDERSTANDINGS, AGREEMENTS, NEGOTIATIONS, REPRESENTATIONS AND WARRANTIES, AND COMMUNICATIONS, BOTH WRITTEN AND ORAL. THESE TERMS PREVAIL OVER ANY OF BUYER'S GENERAL TERMS AND CONDITIONS OF PURCHASE REGARDLESS OF WHETHER OR WHEN BUYER HAS SUBMITTED ITS PURCHASE ORDER OR SUCH TERMS. FULFILLMENT OF BUYER'S ORDER DOES NOT CONSTITUTE ACCEPTANCE OF ANY OF BUYER'S TERMS AND CONDITIONS AND DOES NOT SERVE TO MODIFY OR AMEND THESE TERMS. BUYER'S SILENCE OR ITS ACCEPTANCE OF SELLER'S GOODS CONSTITUTES ITS ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE.

1. Shipping Terms: Unless otherwise agreed upon in writing by an authorized representative of Seller, delivery of goods shall be made FOB Seller's POS. For purposes of these Terms "Seller's POS" shall mean Seller's plant or warehouse, as may be specified in Seller's invoice. Freight and insurance shall be paid by Buyer to the ultimate point of destination.
2. Force Majeure: Seller will not be liable for delays in filling the order or failure in the performance of any of its obligations hereunder caused by accidents, labor disputes or disruptions, strikes, shortages of labor, materials, fuel or power, fire, floods or other acts of God, acts or omissions of Buyer, delays in transportation or lack of transportation facilities, priorities required, requested or granted for the benefit of the government, restrictions imposed by law or any rules or regulations thereunder, or any cause, whether similar to or dissimilar from those encountered, beyond Seller's reasonable control.
3. Warranty: Seller warrants to Buyer that the goods will, at the time of shipment, conform to the Seller's description of the goods indicated in the purchase order, unless otherwise agreed upon in writing by an authorized representative of Seller, subject to Seller's standard manufacturing and commercial tolerances, variations and practices. Such warranty as to description shall not be transferable by Buyer without the express written consent of Seller. Any such warranty is limited to a maximum period of one year from the date of delivery and no claims thereunder may be made after such period. SELLER MAKES NO WARRANTY THAT THE GOODS WILL BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH HEREIN. Samples, if any, supplied by Seller will not be considered to constitute representations or warranties of any type, either express or implied.
4. Limitation of Liability: Seller's liability and Buyer's sole and exclusive remedy for any tender of non-conforming or defective goods or breach of warranty is expressly limited to Seller's choice of: (i) the repair of non-conforming or defective goods; (ii) the replacement of non-conforming or defective goods with conforming goods at Seller's POS (or if international, as stipulated in the delivery terms agreed upon in writing by an authorized representative of Seller) or (iii) the repayment of that portion of the purchase price represented by non-conforming or defective goods. Such repair, replacement or repayment will be made only upon return of the non-conforming or defective goods.
  - a. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO: (I) ANY BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES OF LAW WITH RESPECT TO GOODS SOLD OR SERVICES RENDERED BY SELLER, OR UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERETO; (II) THE TENDER OF DEFECTIVE OR NON-CONFORMING GOODS; (III) BREACH OF ANY OTHER PROVISION OF THESE TERMS; OR (IV) ANY CLAIM OF ANY KIND ARISING OUT OF OR RELATING TO ANY ORDER OR SELLER'S PERFORMANCE IN CONNECTION THEREWITH. In any event, Seller's liability will not exceed the purchase price of the goods on which such liability is based. Buyer assumes all other liability for any loss, damages, or injury to persons or property arising out of, connected with or resulting from the use of Seller's goods, either alone or in combination with other products.
  - b. All delivery or shipping dates are estimates only. Seller will use reasonable efforts to fill the order within 10 days of agreed upon delivery date, but Seller will not be responsible for any delays in filling the order nor liable for any losses or damages resulting from such delays.
5. Inspection, Acceptance or Rejection: Buyer will make adequate inspection of the goods immediately after their receipt and will give Seller prompt notice of any non-conformity or defect; Buyer's failure in either respect will constitute a waiver of such non-conformity or defect. All claims for shortages must be made in writing within 14 days after receipt of the goods by Buyer or its agent and specify the exact shortage complained of. Buyer must give written notice to the carrier's agent in the event of damage or loss in transit. Failure to furnish such written claim within the prescribed period of time shall terminate all liability of Seller. Seller must be given the opportunity to inspect all defective and non-conforming material.
6. Price/Payment: The price of all goods shall be subject to change without notice to reflect any increase in duties, tariffs, penalties, or similar governmental charges, unless otherwise agreed upon in writing by an authorized representative of Seller.
  - a. Buyer shall submit with each payment a statement, which clearly states, without commingling, Seller's invoice numbers, quantity of goods and amount being paid.
  - b. Buyer's obligation to make full and timely payment for each shipment will be without rights of set-off or withholding of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise. The prices and charges stated do not include state or federal excise, sale or use taxes, if any. All such taxes in effect or hereafter levied that are applicable to the order are in addition to such prices and will be paid by Buyer. Unless otherwise agreed upon in writing by an authorized representative of Seller, payment is due in 30 days following the date of Seller's invoice.
  - c. Payment for all goods shall be made in United States dollars unless otherwise agreed upon in writing by an authorized representative of Seller.
  - d. As collateral security for the payment of the purchase price of the goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Colorado Uniform Commercial Code.
  - e. In the event that Buyer fails to pay Seller's invoices when due, (i) Seller may cancel or suspend further deliveries to Buyer, (ii) Buyer shall be obligated to pay Seller on all amounts so unpaid interest, at the rate of 18% per annum or the maximum legal rate for overdue accounts (whichever is less), from the date such payment was due until the date paid by Buyer with all payment charged first to accrued but unpaid interest and then to principal, and (iii) Buyer shall reimburse Seller for any costs or expenses incurred by Seller to collect any overdue amounts, including reasonable attorney's fees.
  - f. Whenever reasonable grounds for insecurity arise with respect to due payment by Buyer, Seller may demand different terms of payment and may, orally or in writing, demand assurance of Buyer's due payment. Seller may, upon the making of such demand, stop production and suspend shipment hereunder. If, within the period stated in such demand, Buyer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of due payment, Seller may, at its option, treat such failure or refusal as a repudiation of the portion of the order which has not been fully performed, or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against tender of documents of title. In all cases, acceptance of an order is conditional for a period of up to five business days to confirm credit worthiness.
7. Variations/Quantity: Weights and quantities shown on the Seller's invoice are estimates only. An order shall be deemed to be completed if the weight or quantity of material delivered is within plus or minus 10% of the Buyer's ordered weight or quantity, provided, however, that Buyer shall be obligated to pay for, and only for, the weight or quantity of material actually delivered.

8. **Packaging and Transportation:** Unless otherwise agreed upon in writing by an authorized representative of Seller, Seller shall package the goods in accordance with applicable industry standards and transport the goods by a common carrier unless a carrier is otherwise identified in writing by Buyer in advance to shipment. The agency and method of transportation of the goods and the routing of the goods to the delivery point will be designated by Seller. If Seller complies with Buyer's request with respect to the use of any agency or method of transportation or any routing other than that which would otherwise be designated by the Seller, all packing, marking, shipping, transportation, and other charges which are in excess of the charges which would otherwise be incurred by Seller will be for Buyer's account.
9. **Change/Cancellation/Termination:** Buyer may not change, cancel, or terminate an order without the prior written consent of the Seller. If Seller consents to a change, cancellation or termination of an order, Buyer shall pay Seller all reasonable charges and expenses incurred by Seller as a consequence of such change, cancellation, or termination, provided, however, that in no event shall Buyer be obligated to pay more than the total agreed purchase price of the goods in question.
10. **Indemnity:** Buyer will release, hold harmless, indemnify, and defend Seller, its present and future officers, directors, officials, employees, agents, subsidiaries, affiliates, successors and assigns, from and against any liability (including without limitation liability for negligence or strict liability), demands, claims, fines, penalties, forfeitures, losses, damages, suits and costs, regardless of the basis of liability or legal principle involved, which any or all of them may suffer, incur, be responsible for or pay as a result of or caused by, arising out of or relating to goods supplied hereunder, the design of goods supplied hereunder, the design of the products into which they are incorporated, the designs of the packages or containers in which they are shipped, or any act or omission of Buyer or its successors, assigns, agents, representatives, or employees.
11. **Additional Shipping Terms:** The goods will be delivered within a reasonable time after Seller's acknowledgement of Buyer's purchase order. Seller shall not be liable for any delays, loss or damage in transit. Seller may, in its sole discretion, without liability or penalty, make partial shipments of goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. If for any reason Buyer fails to take delivery of any of the goods on the date fixed pursuant to Seller's notice that the goods have been made available at the Seller's POS (i) risk of loss to the goods shall pass to Buyer; (ii) the goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
12. **Confidentiality/Rights to Technology:** Unless otherwise agreed upon in writing by an authorized representative of Seller, Seller will not be bound by any obligations of confidentiality or non-disclosure. No right, title, or interest in and to any development, invention, or work of authorship, conceived or developed by Seller during the course of performance hereunder, is conveyed to the Buyer. Seller does not grant to Buyer, and nothing contained herein will obligate or be construed to obligate Seller to grant to Buyer any license under any patents or other intellectual property owned by the Seller.
13. **Title and Risk of Loss:** Title and risk of loss passes to Buyer upon delivery of the goods to a common carrier or other carrier or vehicle designated by Buyer at the Seller's POS. Buyer assumes the entire risk of damage to or loss of any goods from any cause as well as the risk of delay in transportation and/or delivery, as well as all other risks of any kind, regardless of the form of bill of lading, and irrespective of whether title to such goods has passed.
14. **Drawback of Duties and Taxes:** Whenever any legislation or regulation permits the recovery of all or any portion of duties or taxes by either Seller or Buyer, these shall remain payable to the Seller in all cases without limitation unless otherwise previously agreed in writing by Seller and Buyer.
15. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; or (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings related to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
16. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by an authorized representative of Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other material received by Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party.
17. **Governing Law; Dispute Resolution:** These Terms shall be construed in accordance with the laws of the State of Colorado. Any controversy, dispute or claim arising out of or relating to an Agreement shall be submitted to arbitration in accordance with the rules of the American Arbitration Association or to a court of law having competent jurisdiction to resolve the dispute. The parties expressly agree that Seller has the sole and exclusive discretion to select either arbitration or a court as the forum to resolve the dispute. The parties further agree that the suits of the proceedings, whether in arbitration or a court of law, shall be Denver, Colorado, and hereby consent to the jurisdiction of the courts of Colorado for purposes of any lawsuit brought in connection with an Agreement.
18. **Changes to Terms:** Changes with respect to an Agreement are valid only if modifications are in writing and signed by an authorized representative of both parties. Seller may modify these Terms with respect to future sales at any time without notice.
19. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the purchase order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (i) upon receipt of the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.
20. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
21. **Assignability:** Neither party may make any assignment of its rights hereunder, other than to its corporate affiliate, without the express written consent of the other party.
22. **Errors:** Typographic or clerical errors on the face hereof are subject to correction.
23. **No Waiver:** Failure of Seller to enforce any of these Terms shall not be construed as a waiver thereof or a waiver of any other terms or conditions herein or on the face hereof, and the failure of Seller to exercise any rights arising from default of Buyer or otherwise shall not be deemed to be a waiver of such right or any other right. The terms and conditions herein and on the face hereof may be enforced and the rights of Seller may be enforced at any time in whole or in part.
24. **Survival.** Provisions of these terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this order including, but not limited to, the following provisions: Indemnity, Confidential Information, Governing Law; Dispute Resolution and Survival.
25. **Conversion:** Conversion services are performed on a best effort only basis within the constraints of Seller's equipment, operating policies and practices. In the event of any defect in the material caused by the work performed on it by Seller, Seller shall use its best efforts to correct such defect or be responsible to compensate the Buyer in an amount not to exceed the processing costs paid to Seller by the Buyer. The foregoing is Buyer's sole and exclusive remedy with respect to conversion services. Seller accepts no liability for the quality or quantity of the final product. Risk of damage or loss of material owned by Buyer remains with Buyer.
26. **Export Control:** Purchaser hereby represents and warrants that it will comply with all applicable export control and import laws and regulations with respect to any products and services supplied by seller, including as applicable, the U.S. Export Administration Regulations and U.S. sanctions and embargo regulations administered by the U.S. Department of Treasury; and any applicable local laws and regulations and will not directly or indirectly transfer or use any seller's products or technology so as to violate or to cause seller to violate any applicable export controls or economic sanctions or embargoes. Seller is not liable for failure to deliver a product or service due to export control and sanctions compliance related restrictions.