
PORTLAND BOLT & MANUFACTURING COMPANY, INC.
GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms that govern the sale of the goods (“**Goods**”) by Portland Bolt & Manufacturing Company, Inc. (“**Seller**”) to a buyer (“**Buyer**”). Collectively Buyer and Seller are referred to as the “**Parties**” and individually as “**Party**.”

(b) These Terms and any accompanying quote (the “**Quote**”, and 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. *This Agreement supersedes any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Seller expressly rejects Buyer’s general terms and conditions of purchase, and fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions or serve to modify or amend these Terms, whether or not contained in any of Buyer’s business forms or Buyer’s website, and such additional or different terms and conditions will be void and of no effect. No terms, conditions, or provisions other than those stated in this Agreement shall be binding upon Seller unless expressly agreed to in writing by an authorized officer of the Seller.* Acceptance of the Quote by Buyer is a prerequisite to the purchase of the Goods and shall operate as an acceptance of these Terms which are expressly incorporated into the Quote. Once a Quote is accepted by Buyer, Buyer cannot cancel the accepted Quote.

2. Delivery.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of the Goods. Delivery dates given by Seller are estimates only and are subject to shipping variations and requirements. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the Parties, Seller shall deliver the Goods to FOB Seller’s Dock (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within two (2) business days of Seller’s written notice that the Goods are delivered at the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. Buyer is responsible for fees associated with not taking timely delivery of the Goods, such as storage fees.

(c) 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.

3. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. 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 Oregon Uniform Commercial Code.

4. Inspection.

(a) Buyer shall inspect the Goods immediately upon receipt. Buyer will be deemed to have accepted the Goods unless Buyer notifies Seller in writing within sixty (60) days of receipt of any Nonconforming Goods (as defined below) and furnishes such written evidence or other documentation as required by Seller. “**Nonconforming Goods**” means only the following: (i) product shipped is different than identified in the Quote; or (ii) product’s label or packaging incorrectly identifies its contents. Additionally, Buyer may arrange for testing of the Goods at Seller’s location on advance notice, as agreed to in writing by the Parties.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price (as defined below) for such Nonconforming Goods, together with any reasonable third-party shipping and handling expenses actually incurred and paid by Buyer in connection therewith. At the request of Seller, Buyer shall ship the Nonconforming Goods to a location as determined by the Seller. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 4(b) are Buyer’s exclusive remedies for Nonconforming Goods.

(d) Except with respect to Nonconforming Goods for which timely notification is provided, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller. Seller may, in its sole discretion, authorize Buyer to return Goods, provided that Buyer obtains prior written approval from Seller subject to and in compliance with Seller's Return of Goods Policy.

5. Price; Credits.

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in the Quote.

(b) All Prices are exclusive of any and all existing or new or increased sales, use, and excise taxes, and any other similar taxes, duties (including, without limitation, import duties), levies, assessments, imposts, tariffs, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer ("**Taxes**"). Unless otherwise reflected in the Quote, any Taxes that are currently assessed or that may be assessed in the future are for Buyer's account, and Buyer shall be responsible for, and shall pay, all such Taxes (including any bank or credit card charges); provided, that, Buyer shall not be responsible for any Taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets. Buyer shall indemnify and hold Seller and its affiliates harmless from and against any and all third-party claims, liabilities, judgments, awards, penalties, fines, costs or expenses of any kind arising out of or relating to Taxes. The Prices include standard packaging. The Prices exclude transportation and insurance costs which are the responsibility of the Buyer.

(c) Any credits issued by Seller, whether arising from (i) Nonconforming Goods, (ii) warranty claims, or (iii) any other reason at Seller's sole discretion, shall expire twelve (12) months from the date of issuance. After such time, any unused credit balance shall be null and void, and Buyer shall have no further rights with respect thereto.

6. Payment Terms.

(a) Buyer shall pay Seller all invoiced amounts due within 30 days after the date of Seller's invoice. All payments hereunder shall be in US dollars. Seller reserves the right to require pre-payment in its sole discretion.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

7. Buyer Representations and Warranty. Buyer represents and warrants to Seller that (a) all specifications, samples, drawings, designs, plans and other information, requirements or instructions (collectively, "**Specifications**") specified by Buyer are complete, accurate, and sufficient for the intended purpose, and (b) the Specifications shall not infringe, misappropriate, or violate any intellectual property rights of any third-party.

8. Limited Warranty. Seller warrants to Buyer that for a period of six (6) months from the date of shipment of the Goods (the "**Warranty Period**"), the Goods being sold shall (a) be free of significant defects in workmanship; (b) materially conform to the written Specifications specified by Buyer; and (c) where expressly requested by Buyer and agreed to by Seller in writing, meet applicable certification or testing requirements identified in such request ("**Product Warranty**"). Buyer shall promptly notify Seller, in writing, of any alleged warranty claim within ten (10) days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged warranty claim (but in any event before the expiration of the Warranty Period). At the request of Seller, Buyer shall ship the relevant Goods, at its own cost, to Seller's facility for inspection and testing by Seller. If Seller's inspection and testing reveals, to Seller's reasonable satisfaction, that such Goods do not conform with the Product Warranty, Seller shall, in its sole discretion and expense, either (x) repair or replace the defective Goods, or (y) refund the purchase price paid by Buyer for such Goods. This limited warranty is void if the Goods have been (i) subjected to misuse, abuse, neglect, negligence, accident, alteration, abnormal physical stress or environmental conditions or improper testing, installation, storage, handling, repair or maintenance; (ii) used in a manner inconsistent with their intended purpose or Seller's instructions; (iii) used with any third-party product, hardware, or product that has not been previously approved in writing by Seller, or (iv) manufactured in accordance with Specifications provided by Buyer that are incomplete, inaccurate, or otherwise unsuitable. **THIS SECTION SETS FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE PRODUCT WARRANTY.**

9. WARRANTIES DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER INDIVIDUAL OR ENTITY ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 8 OF THIS AGREEMENT. ANY PRODUCTS MANUFACTURED BY A THIRD-PARTY THAT ARE CONTAINED IN, INCORPORATED INTO, ATTACHED TO, OR PACKAGED TOGETHER WITH THE GOODS ARE NOT COVERED BY THE

PRODUCT WARRANTY IN SECTION 8. FOR THE AVOIDANCE OF DOUBT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY SUCH THIRD-PARTY PRODUCT.

10. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER OR ANY OF ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(b) SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER PURSUANT TO THIS AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR SUCH ORDER.

11. Indemnification. Buyer will indemnify, defend, and hold harmless each of Seller and its affiliates and each of their respective employees, officers, directors, and successors ("Buyer Indemnified Parties") harmless against any and all claims, damages, expenses and costs (including attorney's fees and court costs) incurred in connection with claims, demands, suits, or proceedings made or brought against a Buyer Indemnified Party by a third-party, which in whole or in part, directly or indirectly (a) allege that one or more Goods that have been modified and manufactured by Seller to Buyer's requested Specifications infringes, misappropriates, or violates any intellectual property rights of any third-party; (b) arise out of or relate to Buyer's provision of incomplete, inaccurate, or otherwise unsuitable Specifications; or (c) arise out of or relate to the Goods being subjected to misuse, abuse, neglect, negligence, accident, alteration, abnormal physical stress or environmental conditions or improper testing, installation, storage, handling, repair or maintenance by Buyer.

12. Compliance with Law. Buyer shall at all times comply with all laws applicable to the operation of its business, this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use, or otherwise, that violates any law.

13. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement by Seller operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by Seller precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Seller.

14. Force Majeure. Any delay or failure of a Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns, or other industrial disturbances, and shortage of adequate power or transportation facilities). For avoidance of doubt, the foregoing will not relieve Buyer of its obligation to pay the amounts owed to Seller under the terms of this Agreement.

15. Assignment. Buyer's rights, interests, or obligations hereunder may not be assigned, transferred, or delegated by Buyer without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

16. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

17. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement. Nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. The Seller is not a subcontractor or sub-subcontractor to any party in connection with the sale of the Goods, and nothing in this Agreement shall be construed to create any such relationship. The Seller's obligations are limited solely to those expressly set forth in this Agreement and Seller expressly rejects and shall not be bound by any terms or conditions contained in any prime contract, general contract, subcontract, or other agreement to with the Buyer may be a party, including without limitation, any flow-down provisions, pay-if-paid or pay-when-paid clauses, retainage, or any other payment or performance terms.

18. Governing Law; Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without giving effect to any conflict of laws provisions thereof. The regulations of the United Nations Convention on Contracts for the International Sale of Goods are explicitly excluded. All legal proceedings shall be instituted in the state or federal courts of the State of Oregon. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. THE PARTIES HERETO WAIVE THEIR RIGHT TO JURY TRIAL IN ANY LITIGATION COMMENCED TO RESOLVE A DISPUTE ARISING HEREUNDER.

19. Notices. All notices shall be in writing and addressed to the Parties at the addresses set forth on the face of the Quote or to such other address for either Party as that Party may designate by written notice. All notices must be delivered by nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested).

20. Severability. If any term or provision of this Agreement is determined to be 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.