



SPS COMPANIES, INC.

Terms and Conditions of Sale

The following Terms and Conditions are applicable to all sales unless expressly modified on the front of a written proposal signed by an authorized representative of SPS Companies, Inc. (hereinafter "Seller"). Placement of an order or issuance of a purchase order shall be deemed acceptance of these Terms and Conditions of Sale and shall constitute the entire agreement between the parties (collectively the "Agreement").

1. **ACCEPTANCE AND ORDER CONFIRMATION:** Seller's proposal is an offer to sell and not an acceptance of any offer or counter-offer from Buyer. Seller hereby rejects any different or additional terms that may be contained in Buyer's form request for a proposal, purchase agreement, purchase order, or similar document and will not become part of the Agreement between buyer and Seller unless expressly agreed to in writing by representatives or agents of Seller. Seller further reserves the right to accept verbal, facsimile and e-mail orders. In all cases, those orders are to be marked confirming by the Buyer. Verbal orders are accepted at the Buyer's risk. If shipment of an order is made before written confirmation is received, then such orders shall be considered accurate as recorded by Seller. Verbal, facsimile and e-mail orders are considered by Seller to be source documents. All quotations and orders are based on material availability which is "subject to prior sale".
2. **SHIPMENT DATES:** All ship dates quoted are "estimates". All sales are FOB Shipping Point. No contract has been made to ship in a specified time, unless set forth in writing by an authorized representative of the Seller. Seller shall not be liable for any damages as a result of any delay or failure to deliver due to Buyer's inability to satisfy Seller's credit approval or due any cause beyond Seller's reasonable control, including, but not limited to, any act of God or nature, act of Buyer, governmental act, accident, labor disturbances or unavailability, delay in production schedules of the manufacturing facilities, unavailability of materials or transporting difficulties. Seller is also entitled to make additional charges for special packaging, at its sole discretion, to protect goods or materials for safe delivery. Boxing is recommended on materials with finished surfaces. Special packaging will be quoted as a separate line item unless specifically stated otherwise to obtain necessary labor, materials or manufacturing facilities.
3. **PAYMENT TERMS:** Seller's payment terms are Net 30 days from invoice date unless otherwise stated and agreed upon. Seller reserves the right for certain large dollar orders to restrict payment terms to wire transfer, electronic check, or EFT/ACH only and deny Credit card



payment terms. Seller also reserves the right to: (a) charge late fees for past due invoices at the maximum rate allowed by law; (b) withhold any further shipments to Buyer until all past due invoices and late charges are paid in full; and (c) require all further purchases to be C.O.D.

4. **TITLE AND RISK OF LOSS:** Title shall pass over to Buyer upon acceptance by the carrier at the time of shipment. All claims for loss, damage or destruction attributable to shipping must be made directly to the carrier. Seller is not responsible for any such loss, damage, or destruction. The carrier, whether selected by Seller or Buyer, shall be deemed Buyer's agent.
5. **CLAIMS:** Seller is not responsible for shortages or errors in shipment unless written claims are made within five business (5) days of Buyer's receipt of the goods. In any event, claims of shortages, errors in shipment, or damage to the goods should be noted immediately upon receipt of the goods on the bill of lading or delivery ticket. If Buyer requests that the goods be shipped via carrier whose charges do not include insurance, Seller will not insure the goods unless specifically instructed to do so in writing. All charges relating to insurance of goods will be made to the Buyer's account and are due and payable upon receipt of Seller's invoice unless they are billed directly to Buyer by the carrier or applicable insurance provider.
6. **CANCELLATIONS AND CHANGE ORDERS:** Accepted and all special orders are not subject to cancellation without Seller being reimbursed for any and all costs and expenses (including overhead), and indemnified by the Buyer from and against any and all loss. If changes to the specifications of an order are required while an order is in progress, Seller will make every reasonable effort to accommodate Buyer's written request for a change order. Seller may charge for such services accordingly and Buyer agrees to pay for any services, labor, goods, or materials which may be deemed unusable or discarded, or otherwise become reduced in value, as a result of a change order.
7. **RETURNS:** Goods may not be returned to Seller unless Buyer obtains the advance written permission of an authorized representative of seller. Buyer shall be responsible for transportation and handling charges for returned goods. Authorized returned Goods must be shipped prepaid to the location designated by Seller.
8. **EXPORT:** If Buyer exports goods outside of the United States of America, Buyer agrees to comply with all relevant laws and regulations, so as to ensure that the goods are not exported in violation of such laws or regulations. Buyer assumes all responsibility for shipping documents, taxes, fees, etc. with respect to export of goods or materials and any errors as it relates to custom or export documents. Buyer further warrants that Buyer or Buyer's agent shall serve as

the importer of record for any orders of goods or materials exported from the United States in accordance with the applicable laws and regulations of the foreign country to which such goods or materials are exported. Buyer is solely responsible for any tariffs, fees, taxes, preparation, handling, and special packaging related to same. Seller agrees to ship to Buyer or Buyer's agent at a U.S. Port, F.O.B. Factory. Credit terms for such orders are to be irrevocable letter of credit drawn on a U.S. bank, major credit card, or wire transfer.

9. **PASS THROUGH WARRANTY:** Seller hereby assigns and passes through to Buyer, and Buyer shall have the benefit of, all rights it obtains under representations, warranties, and indemnities given by the third-party manufacturer, vendor, supplier, seller, or reseller in connection with any goods provided by Seller pursuant to this Agreement to the extent permitted by the applicable manufacturer, vendor, supplier, seller, or reseller. To the extent that such representations, warranties, and indemnities are not assignable by Seller, Seller agrees that Buyer may assert or enforce any right Seller may have to enforce such warranties, representations, and indemnities, or if such can only be enforced by Seller under its own name, upon written request by Buyer, Seller shall take all reasonable action requested by Buyer to enforce such warranties.
10. **DISCLAIMER:** Any information provided by Seller's representatives is no way intended to be professional advice. Seller's representatives are not authorized to warrant the suitability of any goods for any particular use or form of application. Seller does not imply any warranty for goods or processes that are utilized as a result of information given in this fashion. Seller's products are purchased to proprietary, customized specifications as well as normal industry standards. All properties listed are typical or approximate values, are subject to modification, are for information purposes only, and are not to be relied upon for engineering purposes. When more detailed data is required, please request additional information from Seller's technical services department. Seller reserves the right to decline quotation at its discretion without prejudice.
11. **LIMITATION OF LIABILITY: EXCEPT FOR THE PASS THROUGH WARRANTY AND DISCLAIMER SET FORTH ABOVE, ALL GOODS, MATERIALS, OR OTHER SERVICES SOLD TO BUYER ARE SOLD "AS IS", AND SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER, ITS MANUFACTURER'S, VENDOR'S, SUPPLIER'S, SELLER'S, OR RESELLER'S, BE LIABLE TO BUYER OR ANY THIRD PARTIES, AND SELLER SPECIFICALLY DISCLAIMS LIABILITY TO BUYER AND ANY THIRD PARTIES FOR: ANY**

INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, DAMAGES FOR LOSS OF BUSINESS OR BUSINESS PROFITS, BUSINESS INTERRUPTION, OR ANY OTHER PECUNIARY LOSS, EVEN IF BUYER ADVISED SELLER OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE ABOVE, IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER OR ANY THIRD PARTY, UNDER THE LIMITED WARRANTY OR OTHERWISE, IN THE AGGREGATE EXCEED THE COST OF GOODS, MATERIALS, OR SERVICES PURCHASED OR THE REPLACEMENT OF THOSE GOODS, MATERIALS, OR SERVICES WITH A COMPARABLE REPLACEMENT, AT SELLER'S OPTION.

12. **INDEMNITY:** Buyer shall indemnify, defend, and hold harmless Seller, its owners, directors, officers, employees, representatives and agents from and against all loss, liability, cost, damage, or expense whatsoever, including reasonable attorney's fees incurred by or alleged against Seller as a result of Buyer's breach of these terms and conditions or an order, or otherwise as a result of Buyer's, its agents, or employee acts, errors or omissions. This obligation of indemnity shall survive termination of an order or these terms and conditions of sale whatsoever.
13. **DISPUTES AND CHOICE OF LAW:** All orders and these Terms and Conditions between the Seller and the Buyer for the purchase and sale of goods and/or services created hereunder is deemed made in the State of Minnesota and shall be governed as to validity, interpretation, construction, effect, and in all other respects, by the laws of the State of Minnesota without giving effect to the conflict of laws principles thereof. All claims, disputes, and controversies arising out of or relating to this Agreement, or the breach thereof, shall in lieu of court action, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), and any judgment upon the award rendered by an arbitrator may be entered in any court having jurisdiction thereof. The site of the arbitration shall be Minneapolis, MN, unless another site is mutually agreed between the parties. The parties agree that any party to the arbitration shall be entitled to discovery of the other party as provided by the Federal Rules of Civil Procedure; provided, however, that any such discovery shall be completed within four (4) months from the date the Demand for Arbitration is filed with the AAA.
14. **SEVERABILITY:** If any provision of these terms and conditions as applied to any party or, to any circumstance shall be found by a court to be void, invalid, or unenforceable, it shall not affect any other provision of these terms and conditions, the application of any such provision in any other, circumstance, or the validity of enforceability of these terms and conditions.

15. **INTELLECTUAL PROPERTY RIGHTS:** Any and all inventions, discoveries, patent applications, patents, copyrights, trademarks and trade names, commercial symbols, trade secrets, work product and information embodying proprietary data existing and owned by Seller as of the date of the order or made or conceived by employees of Seller during the Term of the Agreement shall be and remain the sole and exclusive property of Seller; provided that Seller grants to Buyer a license to use, display and distribute any intellectual property rights delivered to Seller as reasonably necessary to perform any order. Any and all inventions, discoveries, patent applications, patents, copyrights, trademarks and trade names, commercial symbols, trade secrets, work product and information embodying proprietary data existing and owned by Buyer as of the date of the order or made or conceived by employees, consultants, representatives or agents of Buyer during the term of this Agreement shall be and remain the sole and exclusive property of Buyer.
16. **ENTIRE AGREEMENT:** The Terms and Conditions set forth herein constitute the sole terms and conditions upon which the Seller offers its goods or services for sale. No other terms, modifications, conditions, or understandings shall be binding upon the Seller, unless signed by an authorized representative or designee of the Seller. Seller hereby specifically objects to any different or additional terms that may be contained in a Buyer purchase agreement or purchase order.