

## TERMS AND CONDITIONS OF SALE

**PLEASE READ CAREFULLY:** THESE TERMS AND CONDITIONS OF SALE (“TERMS AND CONDITIONS”) SHALL APPLY WITHOUT EXCEPTION TO ALL SALES BY SELLER TO BUYER OF MATERIALS, MACHINES, EQUIPMENT, COMPONENTS AND OTHER GOODS (COLLECTIVELY, “GOODS”). EXCEPT AS OTHERWISE SET FORTH HEREIN, SELLER’S ACCEPTANCE OF BUYER’S PURCHASE ORDERS ARE LIMITED TO ACCEPTANCE OF THE MUTUALLY AGREED UPON COMMERCIAL (I.E., NON-LEGAL) TERMS SET FORTH THEREIN (E.G., PRODUCT IDENTIFICATION NUMBER, QUANTITY, SHIPPING DATE, ETC.) AND SHALL NOT BE CONSTRUED TO CONSTITUTE SELLER’S ACCEPTANCE OF BUYER’S LEGAL TERMS AND CONDITIONS SET FORTH OR REFERENCED THEREIN. BUYER’S ACCEPTANCE OF DELIVERY SHALL CONSTITUTE BUYER’S ACCEPTANCE OF THESE TERMS AND CONDITIONS IN THEIR ENTIRETY, IT BEING UNDERSTOOD AND AGREED THAT THESE TERMS AND CONDITIONS SHALL AT ALL TIMES CONTROL AGAINST ANY ADDITIONAL OR CONFLICTING LEGAL TERMS AND CONDITIONS SET FORTH OR REFERENCED IN BUYER’S PURCHASE ORDERS, CORRESPONDENCES, WEBSITES, DOCUMENTS, AGREEMENTS OR OTHER INSTRUMENTS OR UNDERSTANDINGS (WHETHER WRITTEN OR ORAL), NONE OF WHICH SHALL BE BINDING ON SELLER, AND ALL OF WHICH ARE HEREBY REJECTED AND DEEMED MATERIAL ALTERATIONS OF THESE TERMS AND CONDITIONS.

For the avoidance of doubt, none of the following shall be construed to constitute Seller’s acceptance of Buyer’s legal terms and conditions: (a) the waiver of these Terms and Conditions by Seller, or any of Seller’s rights hereunder, in whole or in part; (b) Seller’s failure to enforce these Terms and Conditions or its rights hereunder, in whole or in part; and/or (c) Seller’s acceptance and/or performance of Buyer’s purchase order. If Buyer fails to specifically except to any unacceptable terms of these Terms and Conditions (said exception to be typewritten and acknowledged in writing only and not a part of a pre-printed form), whether contained in Seller’s quotation, an order acceptance, order acknowledgement, packing slip, or the like, Buyer shall be deemed to have accepted all of these Terms and Conditions in their entirety. Upon Buyer’s acceptance in this manner, the parties agree that these Terms and Conditions form a contract that cannot be cancelled, revoked, or modified in any way (including changes in design, specification, or production) without Seller’s specific written consent after appropriate provision of payment by Buyer of all additional costs and expenses caused by such cancellation, revocation or modification.

1. **DELIVERY AND SHIPPING; TITLE:** Delivery dates are estimates. Unless otherwise explicitly agreed in writing by Seller, delivery terms for Goods are FCA Seller’s premises (Incoterms 2010), with all risk of loss or damage to Goods passing to Buyer upon delivery to carrier at Seller’s premises. Claims for shortage must be reported in writing by Buyer to Seller within twenty-four (24) hours of receipt by Buyer; otherwise, all Goods will be deemed delivered and accepted without shortage. Buyer shall be liable for any delays and increased or additional costs incurred by Seller caused by or related to Buyer’s acts or omissions that are not in compliance with this Section 1. Method, mode, carrier and route of shipment are at Buyer’s cost, risk and discretion, unless Buyer fails to supply explicit written instructions to Seller at least five (5) days prior to shipment, in which case method, mode, carrier and route of shipment shall be in Seller’s discretion and Buyer’s cost and risk. Title to Goods passes to Buyer upon Seller’s delivery of such Goods to carrier at Seller’s premises.

2. **LIMITED WARRANTIES; RETURN PROCEDURES:** Seller warrants that, on the date of delivery: (i) Goods and components of Goods that are acquired by Seller from third parties will meet industry specifications for similar or like items; (ii) Seller has the right to convey good title to the Goods sold by Seller to Buyer hereunder; and (iii) Goods that are manufactured or assembled by Seller to Buyer’s written specifications shall meet those specifications. Notwithstanding the foregoing, Buyer acknowledges and agrees that Seller may, without notice to Buyer, incorporate changes to Goods that do not alter form, fit or function. The foregoing warranties shall be enforceable for twelve (12) months following Buyer’s receipt of the Good(s) at issue, it being understood and agreed that Buyer must provide written notice to Seller of such non-conformity within said twelve (12) month period. Buyer may only return non-conforming Goods after: (i) complying with the foregoing notice requirement; (ii) providing Seller with a detailed description in writing of the non-conformity at issue; and (iii) receiving Seller’s written return authorization. Buyer shall prepay all transportation costs and comply with all of Seller’s written instructions in connection with the return of non-conforming Goods. Buyer must return Goods to Seller pre-paid within fifteen (15) days of Seller’s receipt of a return authorization from Buyer.

Neither Seller's provision of authorization to Buyer to return Goods, nor Seller's acceptance of delivery of such returned Goods, shall be deemed or construed to constitute Seller's concession or acknowledgement of non-conformity. If Seller determines, in its sole opinion, that Goods are non-conforming, then, at Seller's option, Seller shall, as Buyer's sole and exclusive remedy for breach of warranty hereunder, either: (i) credit Buyer for the purchase price paid for such Good(s); or (ii) repair or replace such Goods. No warranty shall apply if, in Seller's sole opinion, the non-conformity was caused by or arose from: (i) the improper or unauthorized installation, combination, modification, repair or use of the Goods; (ii) ordinary wear and tear or burnout; or (iii) the negligence or willful misconduct of any party other than Seller. If the non-conformity is determined to be the result of any of the foregoing, then Buyer shall be liable for the costs of inspection, rework, repair and/or replacement, as applicable, and costs and expenses associated therewith.

**3. DISCLAIMERS; EXCLUSIVE REMEDIES: EXCEPT AS EXPRESSLY PROVIDED IN SECTION 2 ABOVE, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO GOODS SUPPLIED OR ANY SERVICES PERFORMED BY SELLER, AND SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. SELLER DOES NOT AUTHORIZE ANY PERSON OR ENTITY TO MAKE OR EXTEND A WARRANTY OF ANY KIND ON ITS BEHALF AND BUYER SHOULD NOT RELY ON ANY PERSON OR ENTITY MAKING ANY SUCH STATEMENTS. EXCEPT AS OTHERWISE SET FORTH HEREIN, ALL GOODS ARE TENDERED ON AN "AS-IS" BASIS. BUYER ACKNOWLEDGES AND AGREES THAT IF ANY MODEL OR SAMPLE WAS SHOWN TO BUYER, SUCH MODEL OR SAMPLE WAS USED MERELY TO ILLUSTRATE THE GENERAL TYPE OF GOODS AND NOT TO REPRESENT THAT THE GOODS WOULD CONFORM TO THE MODEL OR SAMPLE.**

**ANY RECOMMENDATION OR ASSISTANCE PROVIDED BY SELLER CONCERNING THE USE, DESIGN, APPLICATION OR OPERATION OF THE GOODS SHALL NOT BE CONSTRUED AS REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SUCH INFORMATION IS ACCEPTED BY BUYER AT BUYER'S SOLE RISK AND WITHOUT ANY OBLIGATION OR LIABILITY TO SELLER. IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE THE SUITABILITY OF THE GOODS FOR USE IN THE BUYER'S APPLICATIONS. THE FAILURE BY SELLER TO MAKE RECOMMENDATIONS OR PROVIDE ASSISTANCE SHALL NOT GIVE RISE TO ANY LIABILITY TO SELLER.**

**NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN OR ELSEWHERE, THE PARTIES HERETO AGREE THAT BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE GOOD(S) OR CREDIT IN THE AMOUNT OF THE PURCHASE PRICE PAID, AT SELLER'S OPTION.**

**4. SECURITY INTEREST; PRECLUSION OF SET-OFF AND WITHHOLDING: Seller reserves and retains a security interest in the Goods and the proceeds thereof until Buyer has paid Seller in full for the Goods at issue. Until Seller receives payment in full, Seller shall have the rights and remedies of a secured party under the Uniform Commercial Code and Seller is hereby authorized by Buyer to file financing statements and to do any other act or thing necessary or useful in perfecting Seller's security interest in the Goods, and Buyer agrees to execute any and all documents required to be executed on its part to perfect said security interest. Buyer shall not set-off or withhold payment of any invoiced amount against any amount due or to become due from Seller or its affiliates to Buyer or its affiliates.**

**5. ORDER CANCELLATION AND MODIFICATION; DEDICATED INVENTORY: Buyer shall have no right to cancel an order for Goods, in whole or in part, unless Seller, in its sole discretion, agrees in writing that the order (or the part of the order) may be cancelled and Buyer pays cancellation charges in accordance with this Section 5, which Buyer acknowledges are reasonable amounts to be charged for any such cancellation. Unless different cancellation charges are specifically agreed to in a Seller-signed cancellation authorization document for the specific Goods being cancelled, the cancellation charges shall be as follows:**

- a. Standard Goods: Twenty-five percent (25%) of the order value; and
- b. Customized Goods: Cost plus twenty-five percent (25%). "Cost" means any and all costs incurred by Seller prior to the cancellation request, including, but not limited to, the cost of design, labor,

overhead, engineering, material, components, and sales commissions. Seller's determination of the Cost will be conclusive. In no event shall the cancellation charge for a Good exceed the purchase price contained in Seller's final written quotation to Buyer for the Good at issue. "Customized Goods" are those non-standard Goods specially fabricated to Buyer's specifications or requests.

In addition to the foregoing, orders for Customized Goods may not be modified or cancelled by Buyer except upon: (i) an equitable adjustment to the purchase price associated with same; and (ii) Buyer's assent to such additional terms and conditions, if any, established by Seller. In addition to and not in limitation of the foregoing, Buyer shall indemnify, defend and reimburse Seller from, for and against all third-party claims, damages and losses alleged against or otherwise incurred by Seller as a result of any modification or cancellation of orders for Customized Goods, including, but not limited to, restocking charges, loss of use, loss of time, lost profits, overhead and any cancellation charges incurred by Seller from its various vendors and suppliers. "Dedicated Inventory" is comprised of those Goods that Seller keeps on hand at a Seller facility solely in order to service Buyer. Buyer acknowledges and agrees that Buyer shall, within ten (10) days of receiving written notice from Seller (which such notice Seller may provide for any or no reason and at any time), accept delivery and pay Seller at Seller's then current sales price for any or all Dedicated Inventory, as specified by Seller.

**6. LIMITATION OF LIABILITY: NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER OR ITS PARENT OR AFFILIATES OR ITS/THEIR DIRECTORS, OFFICERS, EMPLOYEES OR REPRESENTATIVES BE LIABLE TO BUYER OR ITS AFFILIATES FOR ANY SPECIAL, RELIANCE, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, FOR LOSS OF PROFITS OR INCOME, INJURY TO REPUTATION, LOSS OF CUSTOMERS, LOSS OF USE OR LOSS OF TIME, INCLUDING FOR SUCH DAMAGES ARISING IN CONNECTION WITH DAMAGES TO OR LOSS OF PROPERTY, AND WHETHER IN CONTRACT, TORT, OR OTHERWISE RESULTING FROM SELLER'S PERFORMANCE, NON-PERFORMANCE OR DELAY IN PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, INCLUDING WHETHER OR NOT SELLER HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM ARISING FROM GOODS OR SERVICES PROVIDED AND/OR THESE TERMS AND CONDITIONS SHALL BE LIMITED TO THE PURCHASE PRICE PAID BY BUYER FOR THE GOOD(S) GIVING RISE TO THE CLAIM AT ISSUE, REGARDLESS OF THE NATURE OF THE CLAIM, AND REGARDLESS OF WHETHER SUCH CLAIM AROSE IN CONTRACT, TORT, WARRANTY OR OTHERWISE.**

**7. INTELLECTUAL PROPERTY; INDEMNITY:** Unless otherwise explicitly agreed in writing between Buyer and Seller, all existing and all hereafter arising intellectual property (including but not limited to patents, trademarks, and copyrights), and all existing and all hereafter discovered, invented or developed technology, know-how, works of authorship, drawings, designs, processes, tooling, molds, ideas, methods, and improvements, related in any way to any Good or the way it is designed, fabricated or manufactured, are and shall be Seller's exclusive property (and/or Seller's affiliate/licensor, if applicable). Without limiting the generality of the foregoing, unless otherwise explicitly agreed in writing by Buyer and Seller, Seller shall retain all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, tooling, molds, processes, and ideas developed, discovered or conceived by Seller or its employees, including, but not limited to, those developed, discovered, and/or conceived in connection with the design, fabrication or manufacture of the Goods. Buyer acknowledges that, unless otherwise explicitly agreed in writing by Buyer and Seller, no drawings, designs, molds, tooling, or anything else provided by Seller shall be deemed a "work made for hire." Without limiting the generality of the foregoing, unless otherwise explicitly agreed in writing between Buyer and Seller, all intellectual property rights (including, but not limited to, copyright) in and to any and all drawings and designs provided by Seller in response to Buyer's specifications, requirements or requests are and shall remain exclusively owned by Seller (and/or Seller's affiliate/licensor, if applicable), and Buyer shall not copy, distribute, publish or communicate to any third party any such drawings or designs without prior written authorization of Seller's authorized representative. Buyer agrees (at Seller's reasonable request and at Seller's expense) to execute any additional documents that Seller deems necessary or desirable to confirm or effectuate fully the provisions of this Section 7.

Notwithstanding anything herein to the contrary, to the maximum extent permitted by applicable law, Buyer shall indemnify, defend, release and hold harmless Seller against all suits, damages, claims, demands, causes of action, fines, fees, taxes, costs, judgments, and expenses, including, but not limited to, attorneys' fees and court costs, for actual or alleged infringements of any third-party's intellectual property rights in connection with Seller's manufacture, fabrication or other provision of Customized Goods in accordance with Buyer's specifications or other requests, including, but not limited to, those arising from third-party claims of infringement of existing or pending patents, trademarks, service marks, copyrights and/or trade secrets.

8. **FORCE MAJEURE:** Seller shall not be liable for any loss or damage arising from delay in manufacture, shipment or delivery of any Goods if such delay is due to a cause beyond Seller's reasonable control. Such causes shall include, but are not limited to, outbreak of war, governmental regulations or restrictions, demands of the United States or any governmental subdivisions, restraining orders or decrees of any judge or court of competent jurisdiction, fires, strikes, floods, lockouts, labor disputes slowing down production or transportation, epidemics, accidents, delays in routing, shortages in fuel, raw materials, supplies, labor or transportation facilities and default of suppliers. The happening of any contingency beyond Seller's reasonable control shall not constitute cause for cancellation of Buyer's order, but shall extend Seller's time to ship goods for a period equal to the duration of such contingency.

9. **TAXES:** Prices do not include any tax or any other governmental charges, unless the price indicated by Seller specifically lists such tax or governmental charge as a line item. Buyer is responsible for any and all applicable local, state and federal taxes and governmental charges which may now or hereafter be applicable to any Good, its sale, its value, its use, and/or any services performed by Seller (except any taxes on Seller's income). If sales tax, use tax, or similar taxes or governmental charges in addition to any amounts listed specifically as part of the stated purchase price are imposed upon Seller, Buyer agrees to pay the same or reimburse Seller upon demand. Seller will accept a valid exemption certificate from Buyer, if applicable. If an exemption certificate previously accepted by Seller is not recognized by the governmental taxing authority involved, Buyer agrees to promptly reimburse Seller for any taxes not covered by such exemption certificate, along with any additional charges that Seller is required to pay as a result of such non-recognition.

10. **RISK OF LOSS:** For Buyer's chattel left in Seller's custody or care, if any, Buyer assumes risk of loss through Acts of God, fire, theft, forcible entry or other casualty.

11. **NOTICE:** Any and all notices, requests, demands, or other communications required to be sent by these Terms and Conditions shall be sent in writing and shall be delivered in person or by reliable overnight courier service or sent by certified U.S. Mail return receipt requested to the following persons and addresses:

To Buyer: At the address provided on Buyer's purchase order.

To Seller: Encon Safety Products, Inc.  
Attn: General Manager  
6825 W. Sam Houston Parkway N.  
Houston, Texas 77041

12. **APPLICABLE LAW:** The validity, interpretation, and performance of these Terms and Conditions, and any dispute connected herewith, shall be governed and construed in accordance with the laws of the State of Texas, excluding its conflict of law provisions. The parties agree that the United Nations Convention for the Sale of Goods shall not apply to the purchase and sale of Goods or to these Terms and Conditions. The parties consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Harris County, Texas for the purposes of adjudicating any matter arising out of or relating to the Goods and/or these Terms and Conditions.

13. **ADDITIONAL CHARGES:** Prices quoted are based upon the quantity reflected on Seller's order acknowledgement or shipping ticket. Any deviation in quantity accepted by Buyer will, if applicable, require a bill-back charge issued by Seller and based upon the actual quantity accepted by Buyer, which such charge will be fairly assessed by Seller and Buyer agrees, in connection with such bill-back charge, to pay Seller for any cancellation charges, lease docking charges, restocking charges, work-in-process charges and other fees actually incurred by Seller as a result of any such deviation.

14. **PAYMENT:** Unless otherwise agreed in writing by Seller, payments are due in U.S. currency and within thirty (30) days of the date of Seller's invoice. Invoices unpaid after the due date will be subject to an interest charge of one and one-half percent (1.5%) per

month or the maximum rate allowed by law, whichever is less. Buyer will pay all costs of collection on unpaid amounts, including attorneys' fees.

15. NON-ASSIGNMENT: Buyer may not assign its rights without Seller's prior written consent. Such consent, if given, will not relieve Buyer of its obligations of payment.

16. TESTING AND MISBRANDING: Seller shall not be responsible for Goods or packaging that are misbranded or mislabeled by third-parties. Seller shall not be responsible for testing Goods sold to Buyer unless such Goods are manufactured or assembled by Seller, in which event Seller shall use reasonable quality control measures to determine whether such Goods meet the limited warranties provided under Section 2 above. Buyer shall indemnify, defend and hold harmless Seller from any claim, loss, cause of action, damages, injuries, deaths or other liabilities arising, directly or indirectly, out of any special packaging or assembly that Seller performs to Buyer's specifications or requests.

17. CERTIFICATION: This certifies that, where required by applicable law, the Goods have been manufactured in accordance with applicable military specifications and that the necessary test reports are on file with the manufacturing company and copies of such reports will be made available upon request and that any assembly or manufacturing work performed by Seller has been done in accordance with applicable military specifications relating to such work.

18. MISCELLANEOUS: The parties specifically acknowledge that these Terms and Conditions do not create any rights in or for any third party. No apparent waiver by either party with respect to any breach, default, right or remedy, and no course of dealing, shall be effective as a waiver, or be deemed to constitute a continuing waiver of such matter or of any other matter, unless such waiver is expressed in writing signed by the party to be bound. If any provision of these Terms and Conditions is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions that can be given effect without the invalid or unenforceable provision, and, to this end, the provisions of these Terms and Conditions are declared to be severable, and these Terms and Conditions shall be enforced to achieve, as closely as possible to the extent consistent with applicable law, the spirit and intent of the invalid or unenforceable provision. These Terms and Conditions have been negotiated by the parties hereto and by the respective legal counsel for each party. Obvious quotation or purchase order clerical and stenographic error(s) of Seller or Buyer shall be subject to correction, after notification to the other party of such error(s), and both parties hereto agree to such corrections prior to any shipment against this order.