

## TERMS AND CONDITIONS OF SALE

VMC USA is herein referred to as the “Seller” and the customer or person or entity purchasing goods or services (hereinafter collectively referred to as “Goods”) is referred to as the “Buyer”. These Terms and Conditions, any price lists or schedules, quotations, order confirmations, invoices and any other documents from the Seller relevant to the sale of the Goods, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by the Seller to Buyer. Buyer’s acceptance of the Goods shall show Buyer’s assent to these terms and conditions. Any changes in Buyer’s purchase orders (i.e. part number, quantity, dispatch date, type of packaging, documents, type of transport, delivery address, among others) shall be complied with only after getting the Seller’s approval and be governed by these Terms and Conditions.

The Seller reserves the right in its sole discretion to refuse orders.

These terms and conditions are also available on the Seller’s website. Buyer’s use of the Seller’s website constitutes its agreement to follow them and be bound by them.

**1. PRICES:** Unless a fixed price is quoted, the goods price at which an order is accepted and processed is subject to adjustment to the Seller’s updated price valid at the time of order.

**2. TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller’s costs of production, sale, delivery or shipment or which Seller is otherwise required to pay or collect with reference to the sale, purchase, delivery, storage, processing, use or consumption of Goods shall be for Buyer’s account and shall be added to the price.

**3. TERMS OF PAYMENT:** These Terms are stated on the Seller’s invoice to Buyer in U.S. currency. The Seller shall have the right, among other remedies, either to cease this agreement or to stop further activities under this and/or other agreements with the Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly, or the Seller otherwise deems itself unsafe. Buyer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts. Should Buyer’s financial responsibility become inadequate and unsatisfactory to the Seller, cash payments or security satisfactory to the Seller may be requested by the Seller for future dispatches and for the Goods theretofore dispatched. If such cash payment or security is not supplied, in addition to the Seller’s other rights and remedies, the Seller reserves the right to stop shipments.

**4. SHIPMENT AND DELIVERY:** Shipments are made using INCOTERMS 2010, prior to the Seller and Buyer’s agreement with the appropriate INCOTERM for each shipment. Shipment risks and responsibility shall be therefore governed by the chosen INCOTERM. Any claims for shortages, damages, or any other discrepancies suffered in transit and acknowledged at the moment of Goods inspection at Buyer’s warehouse or premises shall be governed by the Seller’s RMA procedure, otherwise they will be disallowed and deemed waived. Though the Seller uses all reasonable commercial efforts to comply with the delivery date(s) acknowledged or quoted by the Seller, all shipping dates are approximate and not guaranteed. The Seller reserves the right to make partial shipments. The Seller, at its option, shall not be bound to deliver any Goods for which Buyer has not given shipping instructions. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse the Seller for any and all handling and storage costs and other additional expenses resulting therefrom.

**5. INSPECTION AND WARRANTY:** Buyer, at its expense, agrees it will promptly inspect the Goods upon receipt thereof, and in no event later than thirty (30) days from the date of receipt of the goods, the Buyer will have to inform the Seller with a written notice of any and all deficiencies, defects, variations from specifications or complaints of any kind with respect to the quantity, quality, condition, shipment, performance, price or appearance of the Goods so received by Buyer. The Buyer will also have to check the incoming packagings carefully. If packagings are clearly damaged due to transportation, Buyer will have to ACCEPT THE GOODS WITH RESERVATION, otherwise the Seller will not take over any liability and will consider void any claims from Buyer. Buyer may not return Goods without first informing the Seller of the reasons therefore, obtaining from the Seller a *MATERIAL AUTHORIZATION NUMBER* (hereinafter RMA number) and observing such instructions as indicated in the RMA procedure. Within fourteen (14) days from an RMA number receipt, Buyer will have to ship back the damaged goods (transportation prepaid), labelling the returning box with the allotted RMA number. The Seller covers its products with a warranty of 15 months from the production date reported on the Goods (unless agreed otherwise with Buyer). This means that the RMA procedure applies for under-warranty Goods. Any claims referring to out-of-warranty Goods will be subject to repairs only at Buyer's expense (Buyer's acceptance of RFG estimate). Obviously, failures due to misuse, abuse, alteration, negligence, improper installation, accident or normal wear and tear are not covered by this warranty. The Seller repairs or replaces damaged or faulty Goods within 20 work days from the date of Goods receipt. In case returns cannot be repaired and the fault of the damage is the Seller's, a credit note will be issued. Instead, if the Seller's examination discloses no defects covered by this warranty, replacement of such Goods or issuance of credit for same will not be approved.

THIS IS THE SOLE AND EXCLUSIVE WARRANTY GRANTED BY THE SELLER REGARDING THE GOODS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.

This warranty extends only to persons or organizations who purchase the Goods from the Seller for resale.

**6. LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION, REPLACEMENT OR CREDIT UNDER SECTION 5.

THE SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE, AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL THE SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, AND BUYER SHALL INDEMNIFY THE SELLER FOR ANY DAMAGES IN EXCESS THEREOF. BUYER AGREES THAT IN NO EVENT SHALL THE SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHICH ARE WAIVED BY BUYER AND AS TO WHICH BUYER SHALL INDEMNIFY THE SELLER.

The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use of revenue, cost of capital or loss of or damage to property or



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equipment, or loss of reputation. Moreover, Buyer shall indemnify and hold the Seller harmless from any liability to Buyer, Buyer's employees, workers, contractors or any other people arising out of Buyer's, or any other persons' use of the Goods.

All technical instructions and warnings supplied by the Seller will be passed on to those people who use the Goods. The Seller's Goods are to be used in their recommended applications and all labels adhered to the Goods by the Seller shall be left intact.

**7. PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6, the Seller warrants that the Goods sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify the Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate with the Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. The Seller's warranty as to use patents only applies to infringement arising solely out of the inherent operation according to the Seller's specifications and instructions of such Goods. In the event, such Goods are held to infringe such a U.S patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by the Seller, the Seller shall have the right, at its option and expense, to procure Buyer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, the Seller may also, at its option, terminate the agreement as to future deliveries of such Goods, without liability.

To Buyer's knowledge, the Seller points out that some of the Goods sold are patented and also bear the U.S.A. trademark. Further information thereon is available upon request to the Headquarters.

**8. EXCUSE OF PERFORMANCE (FORCE MAJEURE):** The Seller shall not be liable for delays in performance or for non-performance due to acts of God, acts of Buyer, war, fire, flood, weather, sabotage, strikes, labor disputes, civil disturbances or riots, governmental requests, restrictions, allocations, laws, regulations, orders or actions, unavailability of or delays in transportation, default of suppliers, or unforeseen circumstances or events beyond the Seller's reasonable control. Deliveries or other performance may be stopped for an appropriate period of time or cancelled by the Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this agreement shall otherwise remain unaffected.

If the Seller ascertains that its ability to supply the total demand for the Goods, or to get material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth herein, the Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or materials) among itself and its purchasers on such basis as the Seller decides to be equitable without liability for any failure of performance which may result therefrom.

**9. CHANGES:** The Seller reserves the right to change designs and specifications for standard Goods without prior notice to Buyer, but not with respect to customized Goods being made for Buyer. The Seller shall have no obligation to install or apply such modifications in any Goods manufactured prior to the official date of such change. Moreover, the Seller reserves the right to revise the price of the Goods deriving from these changes.

**10. ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of the Seller, and any such assignment, without such consent, shall be void.

**11. NO DUAL USE AND NUCLEAR:** The Seller certifies under its own liability that the Goods sold to Buyer and listed in invoices are NOT INCLUDED in the following lists:

- Y900: Washington Convention - CITES (wild flora-fauna protection), Reg. EEC 338/97.
- Y901: DUAL USE products and technologies, Reg.EEC 428/2009 (Reg. 1183/2007) and therefore for civil use.
- Y903-Y905: cultural heritage goods (Works of Art),Reg. EEC 3911/92.
- Y904-Y906-Y907-Y908:used for death penalty, torture,dishuman, degrading cruel penalties, Reg. EEC no.1236/05 1239/05.
- Y911: restrictive measures against Iran, Reg. EEC 423/07.
- Y916-Y917: chemicals export (Reg. EEC 689/2008)
- Y920: export control of military products and technologies (MG of Reg.EEC 1R 042)
- Y922: cat or dog fur, Reg. EEC 1523/2007 (GUCE L.343).
- substances reducing the ozone layer, Reg. EEC 1005/2009.
- Y926: fluoride greenhouse gases
- Reg. EEC 1210/2003 ref.to specific restrictions to economic and financial relationship with IRAQ (repeal Reg. EEC 2465/1996)
- products listed in "MG" notes connected to the limits
- products containing drugs or psychotropic substances
- Reg. EEC 1110/2008 for goods towards Iran

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Moreover, GOODS AND SERVICES SOLD BY THE SELLER ARE NOT FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS.

**12. SERVICES:** If these Terms and Conditions require the Seller to perform or provide any services, the Seller (including without limitation its successors, assigns, agents or any person or entity acting at the Seller's direction) shall not be responsible for any damages, claims, liabilities or expenses of any nature arising out of such services.

**13. U.S. EXPORT CONTROL LAWS:** All Goods sold to Buyer by the Seller hereunder are subject to U.S. Export Control Laws. Buyer hereby agrees not to re-sell or divert any goods contrary to such laws.

**14. SELLER/CONTRACTOR:** shall comply with all applicable federal, state or local laws, rules, regulations, or orders. Seller/Contractor shall comply with Executive Order 11246, as amended by the Executive Order 11375 and the applicable provisions of the Office of Federal Contract Compliance Programs (OFCCP), 41 CFR Part 60, which are incorporated herein by this reference.

**15. MISCELLANEOUS:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements concerning the subject matter hereof. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by its duly authorized representative. No conditions, usage or trade, course of dealing or performance, understanding or agreement aiming at modifying, varying, explaining, or integrating these terms and conditions shall be binding unless hereafter made in writing and signed by the Seller. No modification shall be effected by the Seller's receipt or acceptance of Buyer's purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein, all of which are objected to by the Seller. No waiver by the Seller with respect to any breach or default of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default of any other right or remedy, unless such waiver be expressed in writing and signed by the Seller. All typographical or clerical errors made by the Seller in any quotations, acknowledgments or publications are subject to correction. The validity,



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performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the state of Ohio regardless of its conflict of law principles. Buyer and the Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. Further, the United Nations Convention on the International Sale of Goods (1980) (as amended from time to time) shall not apply to this Purchase Order or any transactions relating thereto.