

## **STANDARD TERMS AND CONDITIONS OF SALES**

### **AGREEMENT**

The buyer agrees that the terms and conditions as set forth herein will apply to all quotations and purchase orders covering the sale of the Governors America Corp (Seller) products and services and will supersede all printed terms and conditions outlined in purchase orders used by the buyer. Seller shall not be deemed to have waived those terms and conditions appearing in buyer's purchase orders, and buyer's acceptance of products or services called for in said orders shall constitute the buyer's acceptance of these terms and conditions of sale as the only terms applicable to the purchase of such goods or services. Seller will not be bound by any terms of buyer's order that are inconsistent with the terms herein. This agreement shall not be modified and can only be amended in writing and signed by all parties involved.

### **PRICE**

(1) The price of all products, unless otherwise explicitly stated in this agreement, is Free on board (FOB) carrier at the place of manufacture or warehouse location, which is the address of Governors America Corp., exclusive of insurance cost. The cost of standard commercial packaging for regular domestic shipments is included in the invoiced price. When special domestic or export packaging is specified, involving additional expenses, a charge will be made to cover such additional expenses.

(2) Prices quoted are for the products and services of this agreement, technical data, proprietary rights of any kind, patent rights, qualification, environmental, or other than Seller's standard tests unless expressly agreed to in writing by Seller. Unless otherwise stated by Seller in writing, all quotations are firm for sixty (60) days from date of issuance, after which pricing and terms are subject to change.

### **PAYMENT TERMS**

(1) Unless otherwise stated as part of this agreement, the terms of the sale are net 30 days from the date of the invoice. Seller reserves the right to require alternative payment terms, including, without limitation, credit card, letter of credit, or payment in advance. Seller also reserves the right to charge a 1% late fee per month on the past due to invoices.

(2) All orders are subject to, and the obligation of the Seller to make deliveries and is subject to the right of the Seller as provided under BANKRUPTCY OR INSOLVENCY OF BUYER Section, to require of the buyer payment of all or any part of the purchase price in advance of delivery or to make shipment cash on delivery (COD). If the buyer fails to make advance payment when requested by Seller, or if the buyer is or becomes delinquent in the payment of any sum due to the Seller (whether or not arising out of this order) or refuses to accept COD shipment, then Seller shall have the right, in addition to any other remedy to which it may be entitled in law or equity, to cancel the order, refuse to make further deliveries or provide services, and declare, immediately due and payable, all unpaid amounts for goods and services previously delivered to the buyer. Partial shipments made under any order shall be treated as a separate transaction, and payment thereof shall be made accordingly. However, in the event of any default by the buyer, the Seller may decline to make further shipments without in any way affecting its rights under such order.

### **TRANSPORTATION and RISK OF LOSS**

Unless otherwise agreed to in writing by Seller, all shipments will be made at the expense of the buyer, Seller reserving the right to ship products freight collect and to select the means of shipping and routing. All shipments are FOB Agawam, MA 01001, and title to all goods shall transfer to the buyer upon delivery of the goods to the buyer or an agent of the buyer, including a common carrier or warehouse. The risk of loss or damage will pass to the buyer upon delivery of the products to the transportation company at the FOB point.

All shipping containers shall be packed and packaged to: (i) ensure safe arrival to final destination; (ii) secure the lowest transportation costs; (iii) comply with requirements of common carriers; (iv) meet Buyer's written instructions; and (v) meet the requirements of all applicable laws, ordinances, rules and regulations.

### **SHIPMENT**

Seller will attempt to meet shipment schedules. However, any shipment quotation or forecast on an order acknowledgment is only an estimate of the time required to make shipment and Seller will not assume liability, consequential or otherwise, because of any delay

or failure to deliver all or any part of any order for any reason, including its active or passive negligence. Seller reserves the right to allocate inventories and current production in any way it deems desirable.

## **RETURNS**

Products will not be returned to the Seller without first obtaining the Seller's authorization. Each request for the return of products for credit or warranty consideration should state the model and quantity of goods, part numbers, serial numbers, and the reason(s) for return. Products shall be returned in a clean, well-packaged condition. No credit allowance or replacements will be made until the product is received and inspected by the Seller. Please refer to the Limited Warranty and Return Policy (PMB7055) for more details.

## **TERMINATION**

Any order for a standard product with a published list price accepted by the Seller and terminated by buyer at least (30) days before shipment shall be subject to a restocking fee of 15% of the order value to cover costs of processing and order handlings. Orders for nonstandard, special, prototype or service replacement products may not be terminated by buyer except by mutual agreement in writing and may be subjected to a restocking fee of up to 50%.

## **BANKRUPTCY OR INSOLVENCY OF BUYER**

If the financial conditions of the buyer at any time is such as to give Seller, in the Sellers' judgment, reasonable grounds for insecurity concerning a buyer's ability to perform its obligations under this agreement, Seller may (1) by notice in writing to buyer, cancel this agreement, without judicial intervention or declaration of default of buyer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to the Seller, (2) require full payment in advance and suspend any further deliveries for the continuance of the work to be performed by the Seller until such payment has been received or (3) make shipments COD.

## **PROPRIETARY RIGHTS**

The sale of the products hereunder to buyer shall in no way be deemed to confer upon buyer any right, interest, or license in any patents or patent applications or design copyrights the seller may have covering the products. Seller retains for itself all proprietary rights in and to all designs, engineering details and other data, and materials of any products supplied by Seller and to all discoveries, inventions, patents, and other proprietary rights, arising out of the work done by the Seller in connection with the products or with any products developed by Seller as a result thereof, including the sole right to manufacture any such products. Buyer warrants that it will not divulge, disclose, or in any way distribute or make use of such information, and that it will not manufacture, or engage to have manufactured such products. The Seller retains all interests, patents, and Manufacturing rights for any design modifications made by the buyer.

## **LIMITATION OF LIABILITY**

Seller will not be liable for loss, damages, or penalty resulting from delay in delivery of the products when such a delay is due to causes beyond the reasonable control of the Seller, including without limitation, supplier delay, force majeure, an act of God, labor unrest, fire, explosion, or earthquake. In any such event, the delivery date will be deemed extended for a period equal to the delay.

## **SUBSTITUTIONS & MODIFICATIONS**

Seller will have the right to make substitutions and modifications of the specifications of products sold by the Seller, provided that such substitutions or modifications will not materially affect overall product performance.

## **WAIVER**

A waiver of any term, condition or default for specific sales order shall not be construed as a waiver of any other term, condition, or default.

## **GOVERNING LAW**

Sales orders between the buyer and seller shall be construed and interpreted in accordance with the laws of the State of Massachusetts. All disputes shall be adjudicated exclusively in Massachusetts State Court (Hampden County).