

## **TERMS AND CONDITIONS OF SALE**

**PAYMENT AND INTEREST:** All amounts due hereunder shall be immediately payable upon receipt of invoice. Any amounts not paid within thirty (30) days of the date of invoicing shall bear interest at a rate of one and a half percent per month (1.5%).

**ATTORNEYS' FEES:** In the event Von Gahlen International (hereinafter VGI) has to resort to legal action or retain an attorney to enforce any obligations of the Purchaser or Customer hereunder (hereinafter referred to as "Customer"), Customer shall be responsible for all VGI costs of collection, including fifteen percent (15%) of the principal and interest due as attorneys' fees.

**RISK OF LOSS:** The risk of loss of goods sold or equipment services hereunder shall pass to the Customer upon loading of the goods or equipment into transportation equipment at the shipping point.

**ACCEPTANCE:** Customer shall be deemed to have accepted the goods purchased or equipment serviced hereunder, and its right to reject the goods or services, or otherwise make a claim against VGI shall be deemed to have been waived by Customer unless its written claim is received by VGI within ten (10) days after receipt by Customer of goods or services covered by this Agreement. Any such written claim from Customer shall specifically set forth the nature of its claim and each and all of goods or services affected thereby provided, however, Customer shall retain any and all rights, remedies and obligations arising under the Express Warranty given by VGI to Customer.

**NOTICE OF BREACH:** In the event Customer accepts the goods or services and it does not revoke its acceptance, Customer must notify VGI in writing of any breach of warranty or claim of damages on account of the condition or quality of the goods or services within seven (7) days after discovery of the breach. Said notice must specify the facts constituting alleged breach of warranty and all goods and services affected thereby. Failure to give such notice shall be deemed conclusive evidence that no warranty has been breached.

**NON-WAIVER:** A waiver of and/or failure to perform any one or more of the conditions of the Agreement shall not constitute a waiver of or excuse for non-performance as to any other part of this Agreement for future performance by Customer.

**SET-OFF:** Customer's obligation of payment under this Agreement is absolute and Customer shall have no right to withhold payment of any sums owing to VGI by Customer due to any alleged breach of warranty by VGI.

**QUOTED LEAD TIMES AND SHIPPING ESTIMATES:** Quoted lead times are estimates based on availability of materials and current backlog. These conditions change daily. The shipping estimate may be affected between time quoted and time the order is placed. On "special order" items, shipping estimates are to be in effect from factory's receipt of approval drawings from customer.

**CANCELLATIONS:** No cancellations of any orders placed with Von Gahlen will be accepted, unless approved by Von Gahlen. If approved, all cancelled items are subject to a 30% cancellation charge. No cancellations allowed on items deemed "special order" by Von Gahlen.



**LIMITATION OF WARRANTY AND SOLE AGREEMENT:** This Agreement contains the entire agreement from the parties with respect to the goods or services covered hereby, and, except as otherwise expressly written and incorporated herein by reference, **VGI MAKES NO REPRESENTATIONS FOR WARRANTIES, EXPRESSED OR IMPLIED, (VGI EXPRESSLY DISCLAIMING ALL SUCH WARRANTIES), INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES AND MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SAID GOODS.** This Agreement can be altered and amended only by a writing signed by all the parties hereto. No agent, employee or representative of VGI has any authority to bind VGI to any affirmation, representation, or warranty concerning the goods or services hereunder, and unless affirmation, representation, or warranty made by an agent, employee or representative of VGI is specifically included within this Agreement, it shall not be enforceable by Customer.

**LIMITATION OF LIABILITY:** The remedies of Customer set forth herein are exclusive. VGI shall not be liable to Customer for any incidental, special reliance, consequential, or indirect damages or loss, including, without limitation, damages for loss of profit or contemplated use. The total liability of VGI, with respect to transactions contemplated by this Agreement or goods or services furnished hereunder, or with respect to the manufacture, sale, delivery, repair or technical direction covered by or furnished under this Agreement, whether such liability of VGI is based on contract, warranty, negligence, strict liability, indemnity, or otherwise, shall not exceed the purchase price of the goods or services set forth herein and/or on the face of any invoice covering the transaction contemplated by this Agreement.

**ACTS BEYOND REASONABLE CONTROL:** VGI shall not be responsible for any delay or failure of performance under this Agreement if such delay or non-performance is caused by acts of God, floods, fires, explosions, storms, transportation difficulties, strikes, lock-outs or other labor or industrial disturbances, wars, any law, rule, order or any action of any Court, agency or other instrument of the Federal or any State or local government, exhaustion, reduction, or unavailability of product at the source of supply from which deliveries are normally made hereunder or exhaustion or unavailability or delay in delivery of any product or material necessary in the manufacture of the goods sold or services provided hereunder, regardless of whether or not such exhaustion, unavailability, or delay is beyond VGI's control, provided only that the same is not willfully done or brought about for the purpose of excusing failure or omission to perform hereunder, or any other cause or causes beyond VGI's control whether similar or dissimilar to those stated above. In the event of any contingencies or conditions referred to in this provision, VGI shall have the right to curtail or allocate its supply of goods for the sale among all of its customers in any manner which, at its sole discretion, is fair and reasonable in the circumstances, and Customer shall not hold VGI responsible in any manner for losses or damages by which Customer may incur as a result of any such failure, curtailment or allocation by VGI. VGI shall not be required to make up any product not so delivered.

**ASSIGNMENT:** This Agreement shall be binding upon and shall ensure to the benefit of the parties hereunder and their respective successors and permitted assigns. The Customer shall not assign this Agreement without prior written consent of VGI, which consent shall not be unreasonably withheld. This Agreement may be assigned and shall ensure to the benefit of any successor or assignee of VGI without the prior written consent of the Customer.

**GOVERNING LAW AND JURISDICTION:** This Agreement shall be deemed to have been made, governed and construed and enforced under the laws of the State of Georgia. The Customer expressly agrees that any dispute hereunder involving litigation shall be resolved in Federal or State Courts within the State of Georgia and Customer expressly waives any defence it might otherwise have to personal jurisdiction.