

AEROCEL[®]

Terms & Conditions of Sale

- Scope of Agreement:** These Terms and Conditions and those stated on the Aeroflex USA, Inc. (Seller) Order Confirmation or Invoice govern the sale of the product ("Product") and constitute the final and entire agreement between Buyer and Seller ("Agreement"). This Agreement supersedes all prior representations, quotations, proposals, orders, invoices, agreements or understandings, oral or written. The terms and conditions of sale set forth herein shall govern in the case of any inconsistency or conflict between such terms and the terms of any order from Buyer. NO modification of this Agreement is binding on Seller unless made in writing, signed by Seller.
- Price:** Buyer shall purchase the Products in accordance with the prices established by Seller from time to time. Buyer shall purchase the Products at the prices published by seller at the time of sale. Seller reserves the right to establish, revise or delete at its sole discretion, from time to time, any and all prices on the price list.
- Payment:** Buyer shall make full payment of each invoice submitted by Seller in cash or by check in accordance with the terms of the face of this invoice, unless otherwise agreed upon by Buyer and Seller. Receipt of any check shall not constitute payment until Seller has received cash in the full amount thereof. Failure to pay invoices at maturity date makes all subsequent invoices immediately due and payable, irrespective of terms, and the seller may withhold all subsequent deliveries until the full account is settled. Acceptance by the Seller of less than full payment shall not be a waiver of any of Seller's rights and Buyer shall be liable for all costs including attorneys' fees incurred by Seller in collecting payments due under this invoice. If, in Seller's judgment, Buyer's financial situation so indicates, Seller may suspend or alter the credit terms or require payment before shipment, delivery or manufacture. Buyer shall pay Seller amounts due under this invoice in currency of the United States of America. Any tax applicable to any sale, shipment, transportation or use of the goods or material shall be added to and paid by the Buyer with the price. No representative of the Seller is authorized to accept any payment for any products sold by it. Accounts due beyond the date on the face of this invoice are subject to late charges of 1.5% per month on the total amount due at the Seller's sole discretion.
- Security interest:** For the purpose of securing payment to seller and for that purpose alone, title to each product shall be in, and remain with, Seller until receipt by Seller in cash of the full purchase price thereof, together with all charges in accordance with established prices and charges as referred to herein or in the current price list. Seller shall have the right to retake possession of and resell each Product until the same shall have been fully paid for by Buyer.
- Delivery:** Delivery shall be F.O.B. place of shipment. Accordingly, Buyer shall bear the risk of loss, including insurance, during shipment. Seller will attempt to meet delivery dates requested by buyer, however, failures of shipment caused by Buyer or arising from any cause beyond Seller's control, including, without limitation, labor controversies, embargoes, government regulations, accidents, state of war, riots, fires, earthquakes, storms, failures of sources of supply or delay in receiving machinery or materials; nor in any event for any consequential or special damages.
- Taxes and Other:** Buyer is made solely liable for all taxes, duties, demurrage, freight charges, insurance premiums and like charges assessed upon the sale, storage, handling, shipping and transit of the Products delivered to it.
- Cancellation:** Buyer may not cancel, alter or suspend delivery on this order except with Seller's written consent, signed by its officer at Knoxville, TN. A reasonable delay on Seller's part to make any shipment shall not be grounds for cancellation of the order. No cancellations shall be permitted after shipment of goods. Each shipment shall be a separate sale and, upon Buyer's failure to give shipping instructions promptly, Seller may cancel the order or suspend delivery at its option.
- Return & Products:** Returned without Seller's written permission will not be accepted for credit. All returned goods must be new, in saleable condition, with transportation charges prepaid. No credit will be allowed for return of goods of special design, finish or size, or for any goods resumed more than 60 days after shipment. A service charge of 25% of the price (minimum \$100.00) will be paid Buyer to cover handling and inspection of any products returned.
- Arbitration:** Except for actions by Seller to collect amounts due and payable to Seller, any payable to Seller, any controversy, claim or dispute arising out of or relating to the terms and conditions of sale herein or the breach or the default thereof, shall be settled finally by arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association. The arbitration shall take place in Knoxville, TN and the American Arbitration Association shall be requested, insofar as practicable, to limit its panels to persons having expertise in the subject matter of the controversy, claim or dispute. The arbitration awards shall be final, binding on the parties, not subject to any appeal and shall deal with the question of the cost of arbitration and all matters related thereto. Judgment upon the award rendered may be entered by any court having jurisdiction, or application may be made to such court for a judicial recognition of the award or any order of enforcement thereof, as the case may be.
- Indemnity:** Buyer shall indemnify Seller for all expenses, loss or liability resulting from any claim of infringement of patents, design patents, copyrights, or trademarks, or unfair competition in connection with any goods prepared wholly or partly in accordance with Buyer's design or specifications. Buyer further agrees to indemnify Seller for all liability, costs, and expenses, including reasonable attorneys' fees incurred in collecting any unpaid amount or enforcing this Agreement. Buyer also agrees to indemnify Seller for all liability, losses, expenses, claims or causes of action arising from Buyer's negligence, willful acts, commissions and/or breach of this Agreement, including any third-party claims for personal injury or property damage, regardless of the nature of the claim or whether Seller or the Products is alleged to be at fault.
- Governing Law:** This agreement and the sales of the Products shall be governed by the laws of the State of Tennessee, without regard to its choice of law rules.
- Limited Warranty:** Seller warrants to the original purchaser of all products manufactured by it, subject to normal use and used in accordance with Seller's instructions, that such products are free from original defects in workmanship or material for a period of 30 days from the date of shipment. This Limited Warranty is IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller makes no warranty, express or implied, with regard to the end-product manufactured by Buyer. Buyer agrees that it will not alter, amend or add to Seller's Limited Warranty. If buyer desires to offer additional warranties or make any representation on its own, such warranties and/or representations will clearly state that they are Buyer's additional warranties and not those of Seller.
- Limitation of remedy:** In the event of any claimed or actual breach of warranty asserted within the warranty period, Buyer's SOLE REMEDY under the above Limited Warranty in any action, whether based upon warranty, contract, negligence, strict/products liability or otherwise, is LIMITED TO THE REPAIR OR REPLACEMENT AT SELLER'S OPTION OF ANY DEFECTIVE PRODUCT SOLD BY SELLER, TRANSPORTATION PREPAID, F.O.B., POINT OF MAUFACTURE. In no event, shall Seller be liable to buyer, nor to any third-party claiming through Buyer, FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROPERTY, PERSONAL INJURY, LOSS OF BUSINESS, LOSS OF PROFITS, OR ECONOMIC LOSSES) NOR FOR PUNITIVE, STATUTORY, OR EXEMPLARY DAMAGES, WHETHER IN NEGLIGENCE, WARRANTY, STRICT LIABILITY OR OTHERWISE.
- Severability:** Should any of the provisions of this Agreement, or portions thereof, be found invalid by any court of competent jurisdiction, the remainder of this Agreement shall nonetheless remain in full force and effect.

