

**STANDARD TERMS AND CONDITIONS OF SALE**  
**(The Phoenix Company of Chicago, Inc. herein called "Phoenix")**

1. Any difference between the order and instructions submitted by Buyer shall be deemed to have been waived by Buyer in favor of Phoenix's terms and conditions upon Buyer's failure to object in writing within 10 days after receipt of acknowledgment; stenographic and clerical errors are subject to correction. No waiver, alterations or modifications of any of the provisions of these terms and conditions shall be valid unless signed by an authorized representative. Failure of Phoenix to object to modifications or additional conditions inserted in any order from Buyer shall not be construed as a waiver of this Condition of Sale, nor as an acceptance of any such modification or additional condition inserted. All orders are subject to acceptance at our office in Wood Dale, Illinois.
2. Notwithstanding any statement of terms or time payments appearing on the face of this order, Phoenix reserves the right to require payment in advance of shipment or to ship C.O.D. It is agreed that title to and the right to possession of any article not fully paid for at time of delivery to Buyer, shall be retained by and remain in Phoenix until said purchase price is fully paid. Quotations automatically expire 30 calendar days from the date issued and can be terminated prior thereto by notice from Phoenix within such period. This quotation is based upon the quantity and shipping schedule specified on the reverse hereof. All prices quoted are based upon current costs to Phoenix of materials and outside services; such prices are subject to increase if such costs are increased. Quantity prices are based on releases by Buyer within 90 days. Phoenix shall also retain a lien on any tools, molds, inserts or components owned by Buyer and in possession of Phoenix until full payment of Buyer's account.
3. All shipments will be made in accordance with the instructions contained in Buyer's purchase order. If such instructions are changed, all additional shipping or handling charges will be borne by Buyer. In the absence of shipping instructions, Phoenix reserves the right to use its own discretion when routing.
4. Phoenix's policy is to earnestly endeavor to comply with the requests of its customers respecting deliveries. All shipments of articles to be made under any order shall be subject to government priorities or allocations in effect from time to time. Phoenix shall under no circumstances be responsible for failure to fill any order or orders when due to fires, floods, riots, strikes, freight embargoes or transportation delays, shortage of labor, fuel, material, supplies or power, acts of God or of the public enemy, any existing or future laws or acts of the federal or any state government (including specifically but not exclusively, any orders, rules or regulations issued by any official or agency of any such government) affecting the conduct of Phoenix's business, or to any other cause beyond Phoenix's reasonable control.
5. Unless otherwise agreed upon, the information in Phoenix brochures and catalogs is not binding. Technical data provided is for reference only unless expressly stipulated as such by Phoenix.
6. Each party (Phoenix and Buyer) to the contract retains all rights to technical documents provided to the other. The party receiving such documents recognizes these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, or use them for purposes other than those for which they were provided.
7. The price of any article in this contract is based on the contemplated delivery of the full quantity ordered. If this quantity is reduced for any reason, Phoenix reserves the right to adjust the unit price. In addition, an appropriate price adjustment shall apply if the delivery time has been subsequently extended for any reason due to Buyer's delay, or if the nature or the scope of the agreed items or services has changed, or the design, the material or the execution has undergone changes.
8. Unless otherwise agreed upon, payments shall be made, by the Buyer 30 days after the date of invoice, net without any deduction for cash discount, expenses, taxes, levies, fees, duties and the like. The prices stated herein do not include any federal, state or local manufacturer's tax, or sales, use, excise or similar taxes applicable to the sale, delivery or use of articles here under and the Buyer shall pay to Phoenix in addition to the prices herein specified, the amount of any such tax which may be imposed upon or payable by Phoenix. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Buyer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund Phoenix upon production of adequate evidence of payment by Phoenix.
9. The warranty period is 12 months starting when the products ship from Phoenix. If dispatch is delayed due to reasons beyond Phoenix's control, the warranty period shall end not later than 18 months after Phoenix's notification that the supplies are ready for dispatch. The warranty expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give Phoenix in writing the possibility of remedying such defect.
10. Ownership of Tools & Make Ready Charges – Except where otherwise specifically provided for, the tool and Make Ready charges quoted do not cover the entire cost and payment therefore does not convey title to the tools or the right to remove them from Phoenix's possession. However, there will be no further charge for repairs, renewals, or maintenance as long as the tools are in active use, provided that Phoenix may dispose of such tools after a lapse of two years without a reorder.
11. Articles may be returned only with Phoenix's written consent. Such articles shall be returned in accordance with Phoenix shipping instructions, all returned shall be subject to a 10% minimum handling charge. Articles made upon special order to meet Buyer's requirements are not returnable.
12. Orders placed cannot be canceled by the Buyer, nor can deferred deliveries of goods made up or in process be extended beyond the original delivery date specified except with Phoenix's consent and upon terms hereinafter set forth. Phoenix reserves the right to process in advance all articles purchased on a deferred delivery basis. In the event that Phoenix should consent to accept cancellation of any order, adjustment shall be made by the following method:
  - 1) All articles which are completed and ready for delivery on the date that such cancellation becomes effective, will be paid for by the Buyer at the unit order price payable upon delivery to the Buyer.
  - 2) As to all such articles not so completed and ready for delivery, the Buyer shall have the option (with respect to all or any part thereof):
    - A) Of requiring completion and paying the unit price therefore, or
    - B) Of compensating Phoenix for the partially completed and uncompleted portion of the order.

- (1) By reimbursing Phoenix for all actual expenditures made with respect to the partially completed and uncompleted portion of the order.
  - (2) By reimbursing Phoenix for all expenditures made in setting or discharging that portion of its outstanding obligations of commitments which had been incurred or entered into with respect to the partially completed and uncompleted portion of the order; and
  - (3) By paying Phoenix as a profit on the partially completed and uncompleted portion of the order, a sum to be computed in the following manner:
    - (a) Estimate the profit which would have been realized by Phoenix on the partially completed and uncompleted portion of the order if the same had been completed and labor and materials costs prevailing at the date of termination had remained in effect;
    - (b) Estimate from the consideration of all relevant factors, the percentage of completion of the partially completed and uncompleted portion of the order; and
    - (c) Multiply the anticipated profit as determined under (a) by this percentage determined under (b) the result is the amount to be paid to Phoenix as a proportionate of all share of profit as above provided.
13. Phoenix shall not be liable for any claims whatsoever, unless it shall have received from Buyer within 30 days from date of shipping, written notice of such claims specifying in detail and with reliable certainty all defects or defaults forming the basis of such claims. Buyer agrees that Phoenix's liability for loss or damages on any claim of any kind, including, without limitation, negligence in manufacture, engineering or design, or breach of contract or warranty, is limited to an amount equal to the price of the items ordered. Additionally, again without limitation, Buyer further agrees that Phoenix shall not be liable for any penalty or for an indirect, special, secondary, punitive, or consequential damages, such as loss of profits or revenue, loss of or damage to other equipment, or claims of third parties against the Buyer, all such liabilities being waived, discharged and released by Buyer. Buyer warrants that all items manufactured by Phoenix in accordance with specifications provided by Buyer shall be free of the rightful claim of any person arising from a patent or trademark, and the Buyer agrees to indemnify and hold Phoenix harmless against any and all losses, damages, and costs including attorneys' fees, which it might incur as a result of the infringement, or alleged infringement, of any patent or trademark, resulting from its manufacturing activities in accordance with such specifications.
14. Buyer agrees that if production tooling is removed from the premises of Phoenix, a tool-in production charge may be made in an amount equal to 40% of the initial tooling charge, it being agreed that the initial tooling charge did not include any engineering or design changes made in the course of manufacturing Buyer's parts more efficiently and this additional charge is imposed to cover such engineering and/or design changes. All prototype tooling becomes property of Phoenix.
15. Tooling Payment – 33-1/3% of the net tooling charge must accompany the tooling order. 33-1/3% is due and payable upon completion of the tooling, and 33-1/3% is due and payable upon Buyer's approval of samples.
16. In the event Phoenix is required, in its sole judgment, to take legal action to enforce collection of any invoice issued pursuant to this contract, Buyer agrees to pay all costs of such delinquency and collection action, including interest on the balance outstanding from the date said sum becomes due, at the rate of 21% per annum, and including reasonable attorney fees and costs of collection.
17. Buyer agrees to comply with all applicable U.S. export control laws and regulations, specifically including, by not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Buyer agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Buyer, without authority of an export license, agreement or applicable exemption or exception.
18. Buyer agrees to notify Phoenix of the export classification of any deliverable under this Purchase Order that is restricted by export control laws or regulations.
19. Phoenix shall identify to Buyer, the export classification of technical information provided to the Buyer.
20. Buyer shall immediately notify Phoenix's Sales Representative if Buyer is, or becomes listed in any Denied parties List or if Vendor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.
21. If Buyer is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Buyer represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
22. If Buyer is not currently engaged in the business of either exporting or manufacturing defense articles or furnishing defense services, and Phoenix provides Buyer with technical data, controlled by the ITAR, Buyer agrees to register with the Office of Defense Trade Controls, as required by the ITAR, and maintain an effective export/import compliance program in accordance with the ITAR.
23. Buyer shall provide prompt notification to Phoenix's Sales Representative in the event of any violation or potential violation of the EAR or ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the Buyer's performance under this Purchase Order.
24. Buyer shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Buyer, its officers, employees, vendors, agents or subcontractors at any tier in the performance of any of its obligations under Sections 16–24 hereinabove.