



# Seller's Terms & Conditions of Sales

5.2012

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## **Introduction - General Information:**

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All orders are expressly conditioned on Buyer's assent to Clamps Incorporated (Seller's) sales and credit terms only and not to terms and conditions appearing on Buyer's purchase order or contract. Buyer waives any right to object to these terms and conditions. Buyer's assent to these terms and conditions shall be evidenced by acceptance of any shipment. Seller's failure to object to terms contained in any communication from Buyer shall not be deemed to be a waiver of these terms and conditions.

## **Said terms and conditions are as follows:.**

### **Net Prices:**

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All prices are subject to change without notice. This price list supersedes and cancels all previous price lists. Prices are F.O.B. shipping point.

### **Minimum Order:**

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Invoice/Open account minimum order is \$100.00 net. Invoice/Open account orders less than \$100.00 net will not be accepted. Credit card minimum order is \$50.00. Accepted credit/debit cards are American Express, Discover, Master Card and Visa.

### **Telephone Calls:**

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Seller will accept only paid phone calls. Seller will NOT accept responsibility for any errors made in telephoned or oral instructions. To avoid any errors, a confirming purchase order must be mailed, faxed or e-mailed to Seller.

### **Terms of Payment:**

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Terms are 2% - ten (10) days, net thirty (30) days. A 1-1/2% monthly carrying charge will be added to all past due accounts, beginning the thirty-first (31st) day from date of invoice. Shipments can be made C.O.D. or cash in advance prior to credit approval. All invoices are payable in U.S. funds. Please pay from invoice.

### **Cancellations:**

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Buyer may not cancel any order without Seller's prior written approval and will be subject to charges for expenses incurred and work executed by Seller or our suppliers.

### **Shipments:**

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Shipment will be made F.O.B. shipping point at which time risk of loss shall pass to Buyer. Seller reserves the right to select means and route of shipment if specific instructions are not included with order, and Buyer waives any right it may have to notification of shipment. Seller may in its discretion make partial shipments. Seller will endeavor to ship merchandise within the specified time; however, Seller does not guaranty delivery.

### **Risk of Loss and Delivery Title:**

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Liability for loss or damage passes to Buyer on delivery. Delivery of goods by the Seller to the carrier at the shipping point constitutes delivery to Buyer. Title to goods shall pass to Buyer subject to Seller's right of stoppage in transit to secure payment of the purchase price for the goods.

### **Force Majeure:**

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Seller shall not be liable for any delay in performance or for non-performance, in whole or in part caused by the occurrence of any contingency beyond the control of Seller or Seller's suppliers, including but not limited to, war, sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or agency thereof affecting the terms of this contract, judicial action, labor dispute, accident, fire, explosion, flood, storm or other Act of God, shortage of labor, fuel, raw materials, tools, dies or equipment or technical failure. Any such delays shall excuse Seller from performance, and Seller's time for performance shall be extended for the period of delays and for a reasonable time thereafter. In no event shall Seller be liable for direct, indirect, special, incidental or consequential damages for any delay or non-performance.



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## **Multiple Shipments - Separate Contracts:**

If the contract provides for, or if Seller elects to make, multiple shipments or deliveries, each such shipment or delivery shall be construed as a separate sale. Buyer agrees to accept and pay for each such shipment or delivery. Should Buyer fail to accept and pay for each shipment or delivery, Seller may without prejudice to any other lawful remedy defer further shipments or deliveries until acceptance thereof by Buyer or until payment is made by Buyer. Seller may at its sole discretion without liability whatsoever terminate this contract as to any unaccepted or undelivered portion thereof, as well as any other outstanding contract with Buyer. Buyer shall be responsible for any expenses and losses sustained by Seller by so doing.

## **Shortages:**

Shortages or errors made in filling an order must be reported to Seller within ten (10) days of delivery or Seller will not honor them. Before claiming a shortage, Buyer must verify that no containers were received in damaged condition.

## **Loss or Damage:**

For orders shipped F.O.B. origin freight collect, any claims must be filed by the consignee direct with the carrier. Under no circumstances should freight be refused by Buyer. Buyer is to verify that the correct number of pieces is received prior to signing the freight bill. Buyer must make note on the freight bill any visible damage to pieces received.

## **Claims and Allowances:**

Seller shall not be liable for manufacturing defects for goods which pass without objection in the trade under the contract description or for goods which are of fair average quality. Claims of any kind or nature, except for latent defects, are specifically barred unless made in writing by registered mail within sixty (60) days after delivery to Buyer. Seller's limit of liability for defective merchandise shall be the difference in value on contract date of delivery between goods specified and goods actually delivered. The limit of Seller's liability for non-delivery shall be the difference, if any, between the contract price and the fair market price on the contract date of delivery of the goods to be delivered. In no event shall Seller be liable for direct, indirect, special, incidental or consequential damages for any delay or non-performance.

## **Return Goods:**

All returned goods must have an authorization number assigned by Seller. Items returned for credit will be subject to a 20% restocking charge and must be returned FREIGHT PREPAID. No items for return will be accepted beyond twelve (12) months from date of shipment, or if an overstock situation exists at the time of request. Customer must supply Seller with invoice number and purchase order number from which shipment was made. ONLY CURRENT MODEL PARTS IN SALEABLE CONDITION WILL BE ACCEPTED.

## **Overruns:**

Overruns on custom and/or special order merchandise up to 5% of the quantity ordered shall constitute an acceptable delivery.

## **Termination:**

Seller may cancel this contract in the event of Buyer's breach. Seller may also cancel this contract on occurrence of any of the following: insolvency of Buyer; filing by Buyer of a voluntary petition of bankruptcy; filing of an involuntary petition to have Buyer declared bankrupt; appointment of a receiver or trustee for Buyer; execution by Buyer of an assignment or composition arrangement for the benefit of creditors; filing of a voluntary or involuntary petition for corporate reorganization of Buyer; or initiation by any party for any other proceeding involving Buyer as debtor under the Bankruptcy Act, as amended. In the event of any cancellation under this paragraph, Seller without prejudice to any other rights available to it for breach of this contract shall have the right: (i) to refuse to deliver any additional goods; (ii) to recover from Buyer the contract price of all goods delivered and for freight, storage, handling and other expenses incurred by Seller; or (iii) to sell elsewhere and charge Buyer with any resultant damages.



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### **Warranty - General:**

All products manufactured by Clamps Incorporated are warranted to be free from defects in materials and/or workmanship for a period of 30 days from the date of receipt by the original purchaser. If you believe any Clamps Incorporated product you have purchased has a defect in material and/or workmanship, or has failed during normal use within the warranty period, please contact Clamps Incorporated at (800) 837-0141 for assistance. If product repair or replacement is necessary, the Customer will be solely responsible for all shipping charges, freight, and insurance required for transit whether or not the product is covered by this warranty, unless otherwise determined by the factory. All shipments of repaired or replaced products by Clamps Incorporated will be F.O.B. at the Clamps Incorporated factory in Toledo, Ohio 43612 U.S.A., unless otherwise determined by the factory. This warranty is limited to factory defects and excludes items subject to normal wear.

### **Limitation of Warranty:**

This warranty does not apply to any defects resulting from any customer actions, such as mishandling, improper installation, operation outside of design limits, misapplication, improper repair, or unauthorized modifications. No other warranties are expressed or implied. Clamps Incorporated specifically disclaims any implied warranties of merchantability or fitness for a specific purpose. Clamps Incorporated's liability shall be limited to the actual purchase price of any defective product or products to which a claim is made, and shall in no event include the Customer's manufacturing costs, lost profits or goodwill, or any other direct, indirect, special, incidental or consequential damages whether based on contract, tort or customary variances from specifications.

### **Limitation of Damages:**

Clamps Incorporated's products are not intended for personal, family or household use, therefore, this warranty is extended only to commercial and/or industrial users. Products sold by Clamps Incorporated are not designed, intended or authorized for use in applications where the failure of the product could create a situation where catastrophic property damage, personal injury or death may occur. In the event that the Customer purchases or uses any Clamps, Incorporated products for any such unintended or unauthorized application, the Customer shall indemnify and hold harmless Clamps Incorporated and its officers, directors, employees, agents, affiliates, successors and assigns against all claims, costs, damages and expenses (including reasonable attorneys and expert witness fees) arising out of or in connection with, directly or indirectly, any claim for property damage, personal injury or death associated with such unintended or unauthorized use, even if such claim alleges that Clamps Incorporated was negligent regarding the design or manufacture of the subject product. Clamps Incorporated 5960 American Rd. East, Toledo, OH, 43612, U.S.A., Ph / 419.729.2141, Fx / 419.729.5776.

### **Warranty Claim Procedure:**

All warranty claims must be made within forty-five (45) days after receipt by original purchaser. Claims must be in writing and include a representative sample of the defective product, with the proof of purchase. All claims must be mailed to attention of the Warranty Department Clamps Incorporated, 5960 American Road East, Toledo, OH 43612, U.S.A. Clamps Incorporated will promptly advise the user of their findings.

### **Patent Infringement:**

If any merchandise shall be sold by Seller to meet Buyer's particular specifications or requirements and is not part of Seller's standard line offered to the trade generally in the ordinary course of Seller's business, Buyer agrees to indemnify, defend, protect and hold Seller harmless against any and all suits at law or equity and from any and all loss, damage, claims and demands for actual or alleged infringement of any United States or foreign patents, and to defend any suit which may be brought against Seller for any alleged infringement because of the sale of the merchandise ordered by Buyer. In the event Buyer fails to defend Seller, Buyer shall be responsible for all of Seller's attorney fees, costs of defense, expert witness fees and other litigation related expenses.

### **Attorney's Fees:**

If Seller seeks to enforce any of the terms hereof due to Buyer's breach, Buyer shall pay Seller's reasonable attorney's fees and expenses



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## **Assignment:**

This contract is binding upon and inures to the benefit of the parties and the successor and assigns of the entire business and goodwill of Seller or Buyer, but will not otherwise be assignable by Buyer; except that Seller may assign the proceeds of this contract. Nothing in this contract shall inure to the benefit of or be deemed to give rise to any rights in any third party.

## **If you need additional information or have questions, contact Clamps Incorporated:**

Our normal hours are 06:00 - 16:30, EST (U.S.A.) Monday through Thursday.

Clamps Incorporated,  
5960 American Road East  
Toledo, OH 43612 U.S.A.,  
Ph / 800.837-0141  
Ph / 419.729.2141  
Fx / 419.729.5776

4 Day Work Week
<b>M T W T</b>
<b>Weekend</b>
3 Day Weekend