

PACOR, INC. GENERAL TERMS AND CONDITIONS – DOC. 2011.31

All orders and contracts are subject to the terms and conditions of sale stated in (i) the specific contract and (ii) the General Terms and Conditions of Sale set forth below. In the event of any inconsistency between the language contained in the specific contract and these General Terms and Conditions of Sale, the language set forth shall in the specific contract govern and control.

1. ACCEPTANCE OF ORDERS

No order or contract shall be binding on Pacor, Inc (the "Corporation") unless and until it is accepted by the Corporation at Gastonia, N.C. or another location designated by the Corporation. Buyer's consent to and acceptance of, all the terms and conditions contained herein and in the specific contract will be established conclusively by the acceptance of delivery of the goods ordered by Buyer. The Corporation hereby objects to any terms or conditions contained in a purchase order or other document transmitted by Buyer if any such term or condition is inconsistent with, or otherwise varies from any of the terms and conditions set forth herein or in the Corporation's specific contract.

2. TERMS OF PAYMENT

The terms of payment are net 30 days, subject to prior credit approval. If at any time Buyer's credit is unsatisfactory to the Corporation, at its sole option, reserves the right to cancel the order or contract, require payment in advance or require additional assurances satisfactory to the Corporation. Cash discounts apply only to the F.O.B. amount of the invoice and shall be disallowed if any payment of Buyer is past due. Payments are to be made in U.S. funds only. Interest may be charged on past due accounts, and any tax or similar charge levied upon the Corporation for goods ordered by Buyer may be added to the purchase price. Other payment terms and conditions may be set forth on the individual invoice. Invoices shall be paid as presented to Buyer without adjustment or set off for any reason.

3. PRICE REVISIONS

Any price quotation made to Buyer by the Corporation shall remain firm by the Corporation as noted on the front of this quotation. After the expiration of said period, all prices are subject to change without notice. All shipments made after the date of any price change will be billed at the new price subject to the other terms and conditions of this Section. In case of a price decrease, adjustments will not be allowed on goods in transit or in Buyer's inventory. In case of a price increase, orders will be billed at the prices in effect at the time of delivery at the point of shipment. If Buyer considers the new price unacceptable, it may cancel any order or portion thereof with respect to goods not yet delivered to the carrier.

If any federal, state or local laws, regulations, orders or actions to any extent restrict or alter Corporation's price, point of delivery, service allowance or other terms of payment, the Corporation shall have the right from time to time and at any time to: (i) terminate this contract by written notice to Buyer, (ii) suspend deliveries for the duration of such restriction or alteration, or (iii) have applied to this contract, as of the date such restrictions or alterations take effect, any price, point of delivery, service allowance or other terms of payment acceptable to the applicable governmental law, regulation, order or action. The Corporation shall not be held liable to Buyer or any other party as a result of the termination or alteration of a contract pursuant to the terms of this paragraph.

4. SCHEDULING AND SHIPMENTS / EXCUSE OF PERFORMANCE

Delivery dates shown on the Corporation's quotation form or on the specific contract represent the Corporation's best estimate as to delivery time, but such dates are not guaranteed. The Corporation shall not be liable to Buyer for any damages resulting from any delay in delivery caused or contributed to in any way by circumstances beyond the control of the Corporation including, without limitation, war, armed conflict, demands, requests or actions of governmental authorities, national defense, economic dislocation, embargoes, labor trouble, strike, fire, flood, accidents, acts of God, explosion, failure in production or production equipment, inability to obtain fuel, power, supplies, equipment or raw materials, civil disorders of any kind, actions by federal, state or local governmental agencies, or any other cause or causes beyond the control of the Corporation. In the event any of the above circumstances or other circumstances beyond the control of the Corporation causes a delay in the ability of the Corporation to ship Buyer's order, Buyer, will be invoiced for the ordered goods at the prices in effect at the time of shipment unless, the order is previously cancelled by Buyer. Any order made by the Buyer with no definite delivery date specified shall be accepted by the Corporation with the understanding that the Corporation shall have the right to schedule processing and distribution and delivery of such order at the Corporation's convenience.

5. SHORTAGES

All claims of shortages in quantities of goods delivered other than as ordered must be made in writing within thirty (30) days of receipt of shipment and supported by evidence satisfactory to the Corporation. Whenever the supply of certain goods of the Corporation is insufficient to meet the current order requirements of Buyer, or in the event of any of the circumstances set forth in Section 4 above, Corporation reserves the right to keep available a supply of the goods for its own use or to allocate it among various Buyers as it, in its sole discretion, may decide, and in such event the Corporation shall not be required to ship all or any part of Buyer's order. The provisions of this section shall be effective even if the circumstances giving rise to the shortage shall have been in effect on the date the particular order was accepted.

6. MODIFICATIONS / POSTPONEMENTS / CANCELLATIONS

No order of Buyer may be modified, postponed, or cancelled without written consent of the Corporation. Special cancellation charges may apply to orders that require special handling or that require the Corporation to purchase items not normally carried in its inventory.

7. TAXES

Any tax or other governmental charge now or hereafter levied upon the production, sale, use or transportation of goods ordered or sold may, at the Corporation's sole option, be added to the purchase price.

8. DELIVERY AND FREIGHT

Except as otherwise provided in the specific contract, all shipments and prices are F.O.B point of shipment. Delivery by the Corporation to the initial carrier and acceptance by such carrier constitutes delivery to Buyer and the risk of loss of the goods shall pass to Buyer upon the delivery to and acceptance by such carrier. The Corporation assumes no responsibility for any carrier's performance or failure to perform with respect to delivery, loss, damage, or breakage or in any other respect upon acceptance of the goods by the carrier. Any claims against a carrier must be filed by the Buyer. The actual delivery expense is the responsibility of the Buyer and will be billed at cost to the account of Buyer. Any estimate as to delivery costs made by the Corporation shall be considered an estimate only and based upon most economic routing available to the Corporation.

9. QUANTITY VARIATIONS

On any individual order which is not definite as to quantity, or which requests goods not stocked as a standard item or not packed in standard cartons or packages or in which special fabrications or constructions are involved, the Corporation reserves the right to ship and invoice for a quantity of goods which may vary within a reasonable tolerance over or under the quantity specified in the individual order. The Buyer will accept delivery and pay for such revised quantity.

10. RETURN OF GOODS

No goods may be returned for any reason, including claims of alleged defects, unless the Corporation authorizes such return in advance. Any authorized return must be made using carriers approved in advance by the Corporation. If the Corporation finds returned goods to be defective, it either will replace the defective goods or issue a credit to the Buyer for the defective goods, including credit for returned freight if applicable. No credit or replacement of goods will be permitted, however, if the alleged defective goods have been in Buyer's possession for more than thirty (30) days.

11. LIMITATION OF LIABILITY

The Corporation hereby warrants that it has good and legal title to the goods being purchased by Buyer. The Corporation will replace, without charge and at the F.O.B. point of original destination within the continental United States, all goods shown to be other than as so warranted. Notice of breach of this warranty must be given to the Corporation within thirty (30) days after delivery of the goods to Buyer.

THE FOREGOING IS THE ENTIRE OBLIGATION OF THE CORPORATION AND THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PURPOSE WHATSOEVER OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, IN NO EVENT, INCLUDING A CLAIM FOR NEGLIGENCE, SHALL THE CORPORATION BE LIABLE FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

No statement or recommendation made, or assistance given, by the Corporation or its employees, representatives or agents, either orally or in writing, to Buyer or its representatives or customers in connection with the use or installation by Buyer or any of its customers of any goods sold hereunder shall constitute a waiver by the Corporation of any provision hereof or affect the Corporation's liability hereunder.

The Corporation's liability to Buyer is expressly limited to the replacement (in the form originally shipped) of goods not complying with any order.

No action may be brought by Buyer against the Corporation for breach of any sales agreement more than one year after the cause of action accrues.

12. PATENTS

Buyer will indemnify, defend and hold harmless the Corporation from and against all claims, expenses, costs, losses and damages, including reasonable attorneys fees, resulting from alleged or actual infringement of patents, trademarks, trade names, or other proprietary rights of third persons that result from or are contributed to by, the Corporation's compliance with Buyer's designs, specifications or instructions. Buyer shall notify the Corporation promptly of any suit or proceeding brought against Buyer that is based upon a claim that any goods sold by the Corporation to Buyer infringe upon any patent, trademark, trade name or other proprietary right. The Corporation reserves the right to assume full and exclusive control of the defense of any suit brought hereunder and Buyer agrees to cooperate fully with the Corporation in such defense. If the Buyer fails to comply with requirements of this section, it shall have waived any right it might have against the Corporation arising out of such infringement claim.

13. TOOLS

Any equipment or tools which the Corporation constructs or prepares for use in the production of goods for Buyer will remain property of the Corporation and in its possession and control. Any charges for tools appearing on an invoice do not reflect the right of Buyer to purchase such tools.

14. CONFIDENTIALITY

If Buyer receives any confidential or proprietary information from the Corporation or from any of its employees, representatives or agents, Buyer shall maintain such information confidentially and such information shall not be disclosed by Buyer or any of its employees, representatives or agents to any third party without prior written consent of the Corporation.

15. MISCELLANEOUS

The waiver by the Corporation of a breach of any provision hereunder shall not constitute a waiver of any other breach or a subsequent breach of any such provision for the same or any other cause. Together with the specific contract in which these General Terms and Conditions of Sale pertain, these General Terms and Conditions of Sale represent the complete agreement between the Corporation and the Buyer and no additional or different terms or conditions stated by Buyer either orally or in any written document which it submits to the Corporation shall be binding upon the Corporation unless agreed to in writing by the Corporation. Prior courses of dealing, trade usage and verbal representations, to the extent they modify, add to or detract from these General Terms and Conditions of Sales or from the specific contract, shall not be binding on the Corporation. Any contract formed hereunder shall be governed by and construed in accordance with the laws of the state of New Jersey.