

TERMS AND CONDITIONS

1. **Order Subject to Acceptance.** All orders are subject to approval and acceptance in writing or by electronic record by WAV®, Inc. ("Seller").
2. **Entire Agreement.** Acceptance of orders, whether electronic, oral or written, is based on the express condition that Buyer agrees to all of the terms and conditions contained herein. Acceptance of delivery by Buyer will constitute Buyer's assent to these terms and conditions. These terms and conditions represent the complete agreement of the parties, and no terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein shall be binding upon Seller unless made in writing or in an electronic record and signed by an officer of Seller. No modification of any of these terms will be effected by Seller's shipment of goods following receipt of Buyer's purchase order, shipping request or similar forms containing terms and conditions conflicting or inconsistent with the terms herein.
3. **Prices.** All prices are net of transportation costs, which shall be borne by Buyer, unless otherwise specified in writing or in an electronic record signed by an officer of Seller, and are subject to adjustment, without notice, to Seller's prices in effect at the time of shipment. Any increase in transportation rates or any changes in routing resulting in an increase in transportation costs shall be paid and borne by Buyer.
4. **Cash Discount.** Cash discount, if any is indicated, will apply only on the net amount of invoice after deducting transportation charges and taxes thereon, unless otherwise specified, and will be allowed only if taken within the time stated, and provided there are no past due items.
5. **Payment.** All accounts shall be paid net at Seller's offices in Aurora; Illinois within thirty (30) days after the goods are invoiced. A service charge of the lesser of 1½ % per month or the maximum permissible rate will be added to all past due accounts.
6. **Force Majeure.** Seller shall not be liable for delays in shipment or default in delivery for any reason of force majeure or for any cause beyond Seller's reasonable control including, but not limited to, (a) government action, war, riots, civil commotion, terrorist acts, embargoes or martial laws, (b) Seller's inability to obtain necessary materials from its usual sources of supply, (c) shortage of labor, raw material, production or transportation facilities or other delays in transit, (d) labor difficulty involving employees of Seller or others, (e) fire, flood or other casualty, or (f) other contingencies of manufacture or shipment. In the event of any delay in Seller's performance due in whole or in part to any cause beyond Seller's reasonable control, Seller shall have such additional time for performance as may be reasonably necessary under the circumstances. Acceptance by Buyer of any goods shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery of such goods.
7. **Taxes.** All taxes and excises of any nature whatsoever now or hereafter levied by governmental authority, whether federal, state or local, either directly or indirectly, upon the sale or transportation of any goods covered hereby shall be paid and borne by Buyer.
8. **Delivery Title/Risk of Loss.** Unless otherwise agreed in a writing or electronic record signed by an officer of Seller, all delivery dates are estimates and, in no case, shall the Seller be liable for any expense, loss or damage whatsoever suffered by Buyer as a result of Seller's failure to delivery the goods by the specified date. Delivery of goods to carrier shall be deemed delivery to Buyer, and thereupon title to such goods, and risk of loss or damage, shall be Buyer's. Any claim by Buyer against Seller for shortage or damage occurring prior to such delivery must be made in writing within thirty (30) days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from Seller in the condition claimed. Any claim by Buyer for damage occurring during shipment shall be made directly against the freight carrier, with a copy of such claim forwarded to Seller within thirty (30) days.
9. **Returned Shipment.** Any shipments returned to Seller as a result of Buyer's unexcused delay or failure to accept delivery will require Buyer to pay all additional costs incurred by Seller.

10. Disclaimer of Warranties. The goods sold or supplied by Seller to Buyer shall have the warranty (if any) of the manufacturer or other supplier to Seller. Seller makes no warranty in respect of such goods or as to the existence or effect of any warranty of such manufacturer or supplier to Seller. THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Limitation of Remedies. Seller shall not be liable for incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling or use of the goods, or from any other cause with respect to the goods or this agreement, whether such claim is based upon breach of contract, breach of warranty, strict liability in tort, negligence or any other legal theory. Seller's liability hereunder in any case is expressly limited, at Seller's election, to repair or replacement (in the form originally shipped) of goods not complying with this agreement, or to the repayment of, or crediting Buyer with, an amount equal to the purchase price of such goods. Any claim by Buyer with reference to the goods sold hereunder for any cause shall be deemed waived by Buyer unless submitted to Seller in writing within thirty (30) days from the date Buyer discovered, or should have discovered, any claimed breach. Any action for claims arising under this agreement must be commenced within one year following delivery of the goods.

12. Security. Buyer hereby grants Seller a security interest in all goods described herein and all goods heretofore and hereafter sold to Buyer by Seller, and all proceeds thereof, until the purchase price and all other liabilities due Seller in respect of such goods have been paid in full. Buyer shall execute and deliver to Seller any instruments or documents Seller deems appropriate to perfect said security interest including, without limitation, a Uniform Commercial Code Financing Statement. Buyer authorizes, and ratifies and confirms, any filing heretofore or hereafter made by Seller of any financing statements which identify the Buyer as debtor, Seller as secured party, and any goods heretofore or hereafter supplied by Seller to Buyer and the proceeds thereof as collateral. Seller may file a copy of this Agreement at any time as a financing statement for the purpose of perfecting such security interest. Seller shall have all rights and remedies of a secured party under the Uniform Commercial Code, which rights shall be cumulative and not exclusive. Seller reserves the right to require payment for any shipment hereunder in advance, or satisfactory security in addition to that granted herein, if the financial performance or credit worthiness of Buyer is unsatisfactory to Seller. If Buyer fails to make payment in accordance with the terms of this agreement or otherwise fails to comply with any provision hereof, Seller may, at its option (and in addition to other remedies), cancel any unshipped portion of this order; in such event, Buyer will remain liable for all unpaid accounts.

13. Method of Shipment. Seller will use all reasonable efforts to comply with Buyer's requests as to method of shipment, but Seller reserves the right to use an alternate method of transportation or route of shipment if substantial delay might otherwise occur. In such cases Seller will notify Buyer of such changes as soon as reasonably possible.

14. Return of Goods. Goods cannot be returned, and orders once accepted cannot be canceled, without Seller's prior consent in writing or an electronic record signed by an officer of Seller and a return authorization number. All returns that are permitted by Seller must be accompanied by a copy of the original purchase invoice and a return merchandise authorization from Seller. All returns are subject to a 25% restocking fee and must be received by Seller with the original packing materials and cartons in like-new re-sellable condition. All returns subject to in-house credit only.

15. Confidentiality. Any proposals, prints, brochures, drawings, or other information furnished to Buyer by Seller are intended for confidential use by Buyer, shall remain the property of Seller, and shall not be disclosed or used to the detriment of Seller's competitive position.

16. Exclusions. All of Seller's drawings, descriptive matter, weights, dimensions, descriptions and illustrations contained in the Seller's catalogues, price lists or advertisements are approximate only and intended merely to give a general idea of the goods described therein and shall not form part of this agreement.

17. Modified Goods. Because Seller is continually changing and improving the products it carries, Seller may, at any time, withdraw any good from its current product offering, and Buyer further agrees to accept any substitution in fulfillment of Buyer's order.

18. Waiver. Waiver by Seller of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time.

19. Severability. In the event that any one or more of these terms or conditions is held invalid, illegal or unenforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.

20. Controlling Law/Legal Proceedings. This agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the internal laws of the State of Illinois, including the Uniform Commercial Code as enacted in that jurisdiction, without giving effect to the principles of conflicts of law thereof. The jurisdiction and venue of any legal proceedings for the resolution of disputes arising under or in connection with this agreement shall be in the federal or state courts of DuPage County, Illinois, U.S.A.

21. Non-Assignment By Buyer. This agreement shall be binding on the successors and assigns of the parties, but Buyer may not assign, transfer or delegate its rights or obligations under this Agreement without Seller's prior express written consent.

22. Rights and Remedies Not Exclusive. No right or remedy conferred upon or reserved to Seller by this agreement shall be exclusive of any other right or remedy herein or by contract or law provided, all rights or remedies conferred upon Seller by this agreement and by law shall be cumulative and in addition to any other right or remedy available to Seller.

23. Collection Costs. In the event of any default on the part of Buyer hereunder, Buyer shall pay any and all collection costs, including reasonable attorneys fees incurred by Seller.