



XALER SYSTEMS LLC INVOICE TERMS AND CONDITIONS

1. Acceptance and Contract. SELLER'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY CONDITIONED UPON BUYER'S ACCEPTANCE OF ALL TERMS AND CONDITIONS HEREOF. The terms and conditions hereof shall constitute the binding contract between Seller and Buyer concerning the goods sold hereunder. Neither party shall claim any amendment, modification, waiver or release from any provisions hereof unless the same is in writing and signed by both Buyer and Seller.

2. Selling Terms. All goods sold hereunder are F.O.B. Seller's facility unless otherwise stated herein, but Seller retains a security interest in the goods until payment is received. All claims for shipping loss or damage are Buyer's responsibility. Delivery dates are not guaranteed and Seller has no liability for damages that may be incurred due to any delay in shipment of goods hereunder. Taxes are excluded unless otherwise stated.

3. Payment. Payment terms are cash on delivery, unless credit terms are established Seller's sole discretion. Buyer shall pay interest on any unpaid invoices at the rate of 18% or the maximum allowable rate under applicable law, whichever is greater. Buyer agrees to pay Seller cost of collection of overdue invoices, including reasonable attorney's fees.

4. Returns/Cancellations. All claims relating to quantity or shipping errors shall be waived by Buyer unless made in writing to Seller within thirty (30) days after delivery of goods to the address stated. Buyer shall pre-pay freight charges for any approved returns. Buyer shall be obligated to pay for the portion of the order that has been delivered to Buyer or that is in-process at the time of cancellation.

5. Warranty. For goods manufactured by Seller, Seller's standard limited warranty for the goods sold hereby shall apply. Seller's obligation under such warranty, unless otherwise stated, is limited to repairing or replacing, at its factory, any parts which are returned to Seller within said warranty period, freight prepaid, which upon examination prove to be defective. Labor costs are excluded. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, ALL SERVICES AND MATERIALS ARE PROVIDED "AS IS". ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS..



5. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BUYER'S SOLE RECOURSE AGAINST SELLER IS LIMITED TO THE PROVISIONS IN SECTION 5 ABOVE, AND IN NO EVENT SHALL SELLER BE RESPONSIBLE OR LIABLE TO BUYER (OR CLAIMS OF ANY THIRD PARTY AGAINST BUYER) FOR SPECIAL, INDIRECT, COLLATERAL, PUNITIVE OR EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, SUCH EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF GOODWILL, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS OPPORTUNITY, OR OTHER DAMAGES RESULTING FROM ANY DELAY, ACT, ERROR OR OMISSION OF SELLER OR ANY SUBCONTRACTOR OF SELLER HOWEVER CAUSED INCLUDING NEGLIGENCE, GROSS NEGLIGENCE AND STRICT LIABILITY.

6. Force Majeure. Seller shall have no liability to Buyer for delay or failure to perform due to any cause beyond the reasonable control of Seller.

7. Indemnification. Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, lawsuits, damages, liabilities, costs and expenses (including attorney's fees), incurred by reason of any injury to or death of any person, or damage to any property, resulting from or arising out of any act, error, omission, negligence, or misconduct by Buyer in connection with the goods sold hereunder.

8. Governing Law. This agreement and the sale and delivery of all Products hereunder shall be deemed to have taken place in and shall be governed and construed in accordance with the laws of the State of Florida, as applicable to contracts executed and wholly performed therein and without regard to conflicts of laws principles. Buyer irrevocably agrees and consents to the exclusive jurisdiction and venue of the courts of Miami-Dade County, Florida with respect to any dispute, controversy or claim arising out of or relating to this agreement. Disputes between the parties shall not be settled by arbitration unless, after a dispute has arisen, both parties expressly agree in writing to arbitrate the dispute

9. Taxes. Unless otherwise indicated, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, sale or delivery of Products.