

FORMALL, INC.
TERMS AND CONDITIONS OF SALE

1. PROPOSAL CONSTITUTES SELLER'S OFFER

This Proposal, including the terms and conditions on the face hereof, constitutes Seller's offer to sell solely in accordance with the exact terms set forth, and supersedes all prior proposals made with respect to the subject matter hereof. No reference herein to Buyer's inquiry shall in any way modify the terms and conditions hereof. If, in lieu of acknowledging acceptance hereon, Buyer shall issue its Purchase Order, such act shall in all cases constitute Buyer's unqualified acceptance of this offer and no different or additional terms and conditions contained on such Purchase Order, which are hereby objected to by Seller, shall in any way be incorporated herein unless specifically agreed to in writing by Seller's authorized representative.

2. PRICE - PAYMENT

The prices stated herein are based on the prices in effect as of the date hereof. They are subject to change in accordance with the prices in effect as of the date of shipment. Interest at the rate of 1-1/4% per month shall be charged on overdue payments. Listed prices provide for packaging in accordance with Seller's standard specification for domestic or export shipments. If special packaging is required, Buyer shall reimburse for the costs thereof.

a) Freight shall be FOB Formall, Inc with freight expense for the account of the buyer.

3. PERFORMANCE - CHANGES - DELAYS

(a) If a time for performance is stated herein, shipment will be made in approximately the stated number of days from the date of acceptance. If this proposal involves Buyer approval of manufacturing drawings or prototype production, as the case may be, Seller's time of performance shall start upon receipt of such Buyer approval. Delivery shall be deemed complete by the delivery of the product to a carrier designated by Buyer or failing such designation, to any common carrier. Partial shipments are permitted.

(b) Should Buyer cause changes to be made in the design or construction of said product, or otherwise delay or interrupt the progress of the work hereunder, Buyer will reimburse Seller for additional expense to which it may be put by reason thereof, and Seller shall credit Buyer for any reduced-cost which can be established as resulting from any such change.

(c) Seller shall not be liable for any delay in, or inability to complete, the manufacturer of the equipment or its delivery because of any of the following causes: Acts of God; acts of the public enemy; riot or civil commotion; government disorders, rules, regulations, suspensions or requisitions of any kind; strikes or other stoppages of labor or shortage in the supply thereof; inability to obtain fuel, material or parts; fire casualties or accidents; failure of shipping facilities; or any other cause, where of the same or a different character, beyond Seller's control. In such event, the time for delivery of the product shall be extended by a period equal to the time lost on account of any of the causes mentioned. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.

(d) If delays due to fault of Buyer exceed 60 days in the aggregate, the entire purchase price (less Seller's estimated cost for completing the contract, and less any partial payments therefore made) shall be due and payable to Seller on demand.

4. MATERIAL FURNISHED BY BUYER

When Buyer furnishes material, and defects are found by Seller causing rejection, Buyer shall reimburse Seller for work performed up to point of rejection, and Buyer shall furnish replacements for such rejections. Should Buyer furnish material with excessive stock or incorrect dimensions, Buyer shall reimburse Seller for all work necessary to correct same. Seller shall have no liability to Buyer for cost of material furnished by Buyer which is damaged or spoiled during the manufacturing process.

5. INSURANCE

Upon delivery of the product to the carrier Buyer will assume the risk of all loss thereof or damage thereof resulting from any cause whatever. Buyer shall provide and maintain at its own expense, during the term of the contract and until payment thereunder is complete, insurance protecting each party against loss or damage in the full amount of the purchase price of the product herein specified, such loss, if any to be payable to each party as its respective interest may appear.

6. WARRANTY

Goods manufactured by Seller shall conform to the description and specifications set out herein and shall be free of defects in workmanship and material at time of shipment. THE ABOVE WARRANTIES ARE GIVEN IN LIEU OF ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE) AND IN LIEU OF, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. REMEDIES

a) Seller's liability and Buyer's remedy for breach of warranty or otherwise is expressly limited to repair or replacement of non-conforming product of Seller's manufacture when the same are returned F.O.B. Seller's factory within twelve (12) months of shipment hereunder or refund of the purchase price thereof after charging, in either instance, for the service rendered by the non-conforming product.

b) In no event shall Seller's liability exceed the purchase price of the non-conforming item.

c) THE FOREGOING CONSTITUTES THE SOLE LIABILITY OF SELLER AND THE EXCLUSIVE REMEDY OF BUYER WHETHER OR NOT BASED UPON NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, TORT OR ANY OTHER COURSE OF ACTION.

8. CLAIMS

Seller will consider no claims for shortages or errors unless made promptly upon receipt of material.

9. PATENTS

Seller will hold Buyer harmless against any liability for infringement of any apparatus claim of any United States patent, issued at the date of the contract, and arising out of the sale or use in the form supplied by Seller of product designed and/or manufactured by Seller.

Seller will assume no liability with respect to equipment specified by either Seller or Buyer, but not designed and/or manufactured by Seller. Buyer will hold Seller harmless against liability for infringement of any apparatus claims of any United States patent, issued at date of the contract, and involving equipment furnished by Seller in accordance with drawings and/or specifications furnished by Buyer. The party assuming liability, as above stated, shall be notified immediately of any infringement, and shall have the absolute control of the defense thereto, including the right to settle, defend against legal action, or make changes in the product to avoid infringement.

10. DUTY AND TAXES

In addition to the specified purchase price, Buyer will pay all taxes, duties, excises, license fees and other charges levied, assessed, or imposed upon Seller by reason of or applicable to the manufacture, sale purchase and delivery of the product furnished or any parts thereof, as well as the cost by which hereunder such manufacture is increased by reason of any law, ordinance or regulation adopted or promulgated by any government or governmental subdivision, department or agency after the date hereof, but prior to the completion and delivery hereunder. Such payment shall be made to Seller at or before the time when it is required to pay it.

11. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF BUSINESS OR PROFIT OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES.

12. SPECIFICATIONS, DRAWINGS, PATTERNS AND TOOLS

Seller's specifications and drawings pertaining to this order shall not be disposed of to others without Seller's prior written approval nor shall they be used directly or indirectly in any way detrimental to Seller's interest. Seller's patterns and/or tools produced in connection herewith shall remain the property of Seller. Seller is defined as Formall, Inc.

13. RETURNED GOODS

The term Returned Goods is that unwanted - unused stock material that a purchaser desires to return to Seller for restocking and credit. The charge for restocking of all Seller's products will be 35%. All goods shall meet the following criteria:

a) Product must be current design.

b) Products must be in saleable condition, except for repacking that may be required due to changes in packaging specifications.

c) Custom products cannot be restocked.

Products must be returned with freight prepaid to the acceptance point as designated.

Consistent with our Distributor Policy, we will waive the 35% restocking charge for material returned from contract Distributors provided the request for return is accompanied with an order for merchandise from the same operation equal to or greater than the value of the return requested.

Returns are limited to 10% of the previous 12 months sales or \$5,000 - whichever is less.

14. CANCELLATION OF ORDERS

The following charges will apply to all cancellation of orders after acceptance of the orders by the Seller. All charges will be computed on the selling price of the material.

A 25% charge or \$100.00 minimum will apply when an order for finished stock merchandise is cancelled at either a warehouse or a plant location.

For purposes of clarification made-to-order products and parts are those which are not normally stocked in a finished condition at any of our distribution or manufacturing facilities.

A 60% charge or \$100.00 minimum will apply if the order has not been scheduled.

An 85% cancellation charge plus any incurred costs for engineering and special parts will apply when an order has been released for production. A cancellation charge of up to 100% will apply when an order is cancelled after production has started.

Completed units and parts are subject to cancellation charge of up to 100%.

15. GOVERNING LAW AND JURISDICTION

a) All disputes arising under or related to this Proposal or Buyer's acceptance thereof shall be construed in accordance with and governed by the laws of the State of Tennessee.

b) The Buyer, in respect of itself and its properties, hereby consents and submits to the nonexclusive jurisdiction of any United States Federal or Tennessee state court sitting in Knoxville, Tennessee in respect of any suit, action, dispute, or proceeding arising out of or relating to this Proposal and any sale and purchase hereunder, and irrevocable agrees that all claims in respect of any such suit, action, dispute, or proceeding brought in any such court and any claim that any such suit, action, dispute, or proceeding brought in any such court has been brought in an inconvenient forum.

16. EXPENSES AND ATTORNEY FEES

If the Seller shall retain or engage at any time an attorney or attorneys to collect or enforce or protect its interests with respect to this/a Proposal and any sale and/or purchase there under, the Buyer shall pay all costs and expenses of such collection, enforcement, or protection, including reasonable fees or attorneys, and the Seller may take judgment for all such amount. The obligations of the Buyer under this paragraph shall survive the termination of this Proposal.