

## TERMS & CONDITIONS

**1. Agreement.** The terms and conditions set forth herein shall be deemed incorporated into the invoice and shall constitute the agreement by and between MTN Products, Inc. ("Seller") and the party who is identified as the purchaser of the goods and/or services on the invoice ("Buyer"). Acceptance of the goods shipped pursuant to this Agreement shall constitute acceptance of the terms and conditions hereof regardless of whether Buyer has signed or acknowledged the Agreement herein.

**2. Payment Terms.** The price for the purchase of each good ("Products") is as set forth on the invoice. Payment of the full purchase price is due within twenty (20) days from the date of invoice. Invoices not paid when due shall be subject to a late charge equal to 1% of the amount of the invoice per month, or the highest lawful rate which may be charged to Buyer. Buyer hereby grants to Seller a purchase money security interest under the Uniform Commercial Code ("U.C.C.") in the Products until such time as full payment is received by Seller.

**3. Delivery.** Delivery shall be pursuant to Incoterms 2010 and as further specified in the invoice to Buyer. Buyer may be notified of the approximate delivery and arrival date(s) of the items of Products ordered, but Seller does not guarantee nor warrant a particular day of delivery. Delivery is contingent upon adequate prior financial arrangements if applicable. Delivery of Products to a common carrier, licensed trucker, or vessel shall constitute delivery to Buyer. Accordingly, title to the Products and risk of loss shall pass to the Buyer upon Seller's delivery of Products to the FOB destination listed on the invoice. Seller shall not be liable for any delivery or shipping delays which arise from but which are not limited to the following: fire, explosion, flood, storm, acts of God, governmental acts, orders or regulations, hostilities, civil disturbance, strike, labor difficulties, machinery breakdown, transportation contingencies, difficulty in obtaining supplies or shipping facilities or delay of carriers.

**4. Acceptance.** Buyer agrees that within ninety (90) calendar days from the date Products are placed in service, Buyer shall notify Seller in writing of any shortage, nonconformity, defect or problem with the Products or any other items delivered to Buyer. Buyer agrees that Buyer's failure to provide written notice to Seller within said time period shall constitute Buyer's unequivocal acceptance of the Products and acknowledgment that there is no shortage, nonconformity, defect or problem with the Products.

**5. Offset.** Payment of the purchase price and all sums due to Seller shall be made in full pursuant to the terms herein without any deduction, credit or offset unless pursuant to a credit memo issued by Seller. Buyer's failure to pay the full amount when due, without any deduction, offset or credit, shall constitute a material breach of this Agreement.

**6. Taxes.** The sales price specified on the face of the invoice does not include any amount for present or future sales, use, excise or other similar tax which may be applicable to the sale of the Products, or the use thereof by Buyer. Buyer agrees to pay all such taxes, including taxes applicable to the manufacture, sale, delivery, or use of the Products furnished hereunder, as well as interest and penalties therein. If Seller is required to pay such taxes to a taxing authority, Buyer will promptly reimburse Seller for the amount paid.

**7. Indemnity.** Buyer shall and does hereby agree to defend, indemnify and hold Seller harmless of and from any and all liability loss, cost, injury, damage, demand and expense (including, without limitation, reasonable attorneys' fees) of any kind whatsoever arising out of, on account of, or in connection with a breach of this Agreement and/or any use or misuse of the Products. This indemnity shall not be affected or terminated by reason of the termination of this Agreement or purchase, for any reason, with respect to all or any part of the Products.

**8. Return of Products.** Unless Seller shall have authorized or permitted, in writing, the return of any Products, Seller shall not be obligated to accept any returns, exchanges or provide any credits for any Products. In the event Seller, in its sole discretion, allows and accepts the return of any Products purchased pursuant to this Agreement, Buyer shall be obligated to pay a restocking charge equal to 25% of the Products'

purchase price. In the event the return of Products includes other products, not sold by Seller, then Seller at its sole option may dispose of such other products and charge Buyer for any transportation charges or other applicable expenses incurred in the shipment of such other non-Seller products by Buyer to Seller.

**9. Cancellation.** Any cancellation of Products ordered but not paid for by Buyer will be subject to a ten (10%) percent cancellation charge based on the total purchase price. This charge shall be in addition to any other claims or damages which Seller may have against Buyer for a cancelled order.

**10. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY AS SHOWN ON [WWW.MTNPRODUCTS.COM](http://WWW.MTNPRODUCTS.COM), SELLER DISCLAIMS ANY OBLIGATION OR LIABILITY WITH RESPECT TO THE PRODUCTS OR THEIR SALE AND USE, AND SELLER NEITHER ASSUMES NOR AUTHORIZES THE ASSUMPTION OF, ANY OBLIGATION OR LIABILITY IN CONNECTION WITH THE PRODUCTS. THIS DISCLAIMER INCLUDES ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY RESPECTING THE PRODUCTS OR ANY PARTS OR COMPONENTS THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**11. Liability Limitation.** SELLER'S TOTAL LIABILITY TO BUYER FOR ANY CLAIM ARISING HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE SPECIFIED ON THE FACE OF THE INVOICE AND PAID BY BUYER. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR LIQUIDATED DAMAGES OR PENALTIES, INCLUDING CLAIMS FOR LOST REVENUE, PROFITS OR BUSINESS OPPORTUNITIES, EVEN IF SELLER HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, OF THE POSSIBILITY OF SUCH DAMAGES.

**12. Entire Agreement.** This Agreement constitutes the final and entire agreement among the Parties with respect to the subject hereof. Any statement of Seller, Seller's sales representative, or any agent of seller or any different or additional terms and conditions of other order form(s) submitted by Buyer respecting the Products or the order shall be given no force or effect unless it has been accepted and signed by Seller's Chief Financial Officer.

**13. General Provisions.** Any amendment, addendum, or revision to this Agreement shall be valid only if in writing and signed by the Parties. This Agreement constitutes a personal contract and the Buyer shall not transfer or assign the Agreement or any part thereof without the prior written consent of the Seller. In the event that litigation, judicial process or any other action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to attorneys' fees and costs. Each party hereto acknowledges and represents that he has fully and carefully read this Agreement and is accepting this Agreement as a free and voluntary act. This Agreement shall be deemed to have been drafted mutually between the Parties. Any ambiguity shall not be construed or interpreted against either party. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the Parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the Parties. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action between the Parties shall be venued in the County of Los Angeles.