

TERMS AND CONDITIONS OF SALE

1 **Acceptance** of all orders placed with Fiberguide Industries, Inc. ("Seller") is expressly conditioned upon Purchaser's assent to the terms and conditions below.

2 **Adjustments to Prices.** Unless a price for a longer period of time has been established by written agreement between Seller and the Purchaser, Seller reserves the right to change the price of any product without notice.

3 **Payment Terms.** All payments shall be made in U.S. Dollars. Payment in full is due thirty (30) days after the date of the invoice. Late payments are subject to a late payment charge of interest at the rate of one and one-half percent (1½%) per month on all overdue accounts unless a lower rate is required by law. Seller's normal payment terms set forth above are subject to verification of Purchaser's credit by Seller, and Seller may, in its sole judgment Purchaser's financial condition does not justify continuance of such normal payment terms, at any time require either full or partial payment. In case of default of any payment by Purchaser, Purchaser shall be responsible for all costs of collection including and without limitation attorney's fees and other litigation or settlement costs.

4 **Shipment.** All products are sold and priced F.O.B. Seller's point of shipment.

5 **Limited Warranty.** Seller warrants that its manufactured products will be delivered free from defects in material and workmanship for a period of ninety (90) days from date of shipment. This warranty does not extend to any products which have been subject to misuse, accident or improper installation, maintenance or application, nor does it extend to products which have been cabled, installed, repaired or altered outside Seller's plant unless authorized in writing by Seller or unless cabling, installation, repair alteration is performed or contracted for by Seller, nor does this warranty extend to any labor charges for removal and/or replacement of the nonconforming or defective product or part thereof. THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT OR PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS. Seller shall have no liability for special, indirect, liquidated or consequential damages (including but not limited to damages for lost profits, or injuries to persons or property). Seller's liability under this warranty shall be limited, at Seller's option, to repairing by Seller or replacing, with transportation charges prepaid by the Purchaser.

6 **Returned Material.** Products may be returned only with Seller's written permission or accompanied by a return authorization number issued by Seller to the Purchaser. Only unused and resalable products which have been invoiced to the Purchaser within the previous thirty (30) days, will be considered for return. Products accepted for credit are subject to a restocking and service charge of fifteen percent (15%) plus transportation charges. Products returned for credit must be returned in good salable condition with Seller's original label intact and legible. Transportation charges are to be prepaid by Purchaser.

7 **Claim, Indemnification.** The liability of Seller with respect to a claim of any kind, whether as to quality or amount of product delivered or for nondelivery of products, shall not exceed the invoice price of the quantities of products as to which the claim is made. Purchaser shall be responsible for inspecting and testing all products delivered to it hereunder upon receipt and before any use by Purchaser. Any claim with respect to products must be made no later than thirty (30) days after the date of shipment thereof or prior to first use thereof, and failure by Purchaser to give Seller written notice of claim or to obtain from Seller an authorization number for return with respect to any products within such time shall constitute a waiver by Purchaser of all claims with respect to such products. Products which conform to samples supplied to Purchaser and prequalified or previously accepted and any products used by Purchaser shall be deemed satisfactory and Purchaser shall have no right to make claims with respect to such products. Purchaser assumes all responsibility and liability for injury or damage, resulting from its handling, possession, use or sale of products supplied hereunder including but not limited to and injury or damage resulting from the use of products in Purchaser's manufacturing operations or in combination with other substances or products, and agrees to defend and indemnify Seller from, and against all claims, losses, liabilities and expenses including attorney's fees and other litigation or settlement costs arising out of such handling, possession, use or sale.

8 **Special Tooling and Equipment.** Any special materials, including but not limited to tooling and equipment which are acquired by Seller to facilitate the manufacture of the Buyer's order shall remain the property of the Seller.

9 **Patents, etc.** Seller shall not be liable for the indemnification of Purchaser for damages resulting from the infringement of any United States or foreign country patent rights arising out of or in connection with any product. In the event that any product supplied hereunder gives rise to any such patent infringement, or allegation thereof, Seller expressly retains the right to refer complaining parties to Purchaser for settlement and to include Purchaser as a party-defendant in any suit based on such infringement or alleged infringement, Purchaser shall indemnify and hold Seller harmless from any and all claims, loss, damage, liability and expense (including, without limitation, reasonable attorney's fees and disbursements and other litigation and settlement costs, regardless of outcome) arising out of any claim that any product supplied hereunder infringes any third-party patent rights.

10 **Proprietary Information.** Any proprietary information pertaining to the work to be performed hereunder which may be furnished by Seller to Purchaser will remain Seller's property, will be held in confidence by Purchaser, will be returned to Seller upon request, and may not be used without Seller's written permission for any purpose other than its intended use hereunder.

11 **Force Majeure.** Failure of Seller to make or of Purchaser to request or accept, any one of more deliveries (or portions thereof) hereunder when due shall not subject the party so failing to any liability to the other if such failure shall be caused or occasioned by act of God or the public enemy, government action, fire, explosion, flood, drought, war, riot, sabotage, embargo, strikes, or other labor trouble, failure in whole or in part, of Seller's suppliers or any subcontractor to deliver on schedule materials, equipment, or machinery to Seller, interruption of or delay in transportation, shortage of fuel, energy or utilities, or by any other event or circumstance of a similar or different nature beyond the reasonable control of the party so failing; and, at the option of the party so failing, the total quantity to be delivered hereunder shall be reduced by the quantity of the delivery or deliveries (or portions thereof) not made on account of any of the above causes, in no event shall Seller be obligated to purchase products from others in order to enable it to deliver products to Purchaser hereunder.

12 **Product Discontinuance.** Should Seller elect to discontinue, curtail or limit the production or sale of any product as a result of the application of any governmental statute, regulation or order, including but not limited to any statute, regulation or order applicable to prices, transportation, energy, pollution or product safety, which, in Seller's judgment, will render the production or marketing of such product economically, technologically or commercially infeasible, Seller may, without penalty or other charge, terminate this agreement with respect to such product upon thirty (30) days prior written notice to Purchaser.

13 **Termination by Purchaser; Failure to Purchase.** In the event that Purchaser terminates this agreement for any reason prior to purchasing and paying for the full quantity of products required to be purchased hereunder, or in the event Purchaser fails for any reason (other than Seller's failure to deliver) to purchase and pay for said quantity within the agreed upon term, upon such termination or expiration of this agreement (a) if the products not so purchased and paid for have been produced by Seller prior to such termination or expiration and are not salable to other customers within a reasonable time (as determined by Seller), Purchaser will pay Seller an amount equal to the entire contract price thereof, and (b) in all other cases, Purchaser will pay Seller, as liquidated damages, an amount equal to fifty percent (50%) of the contract price for the quantity of goods which Purchaser was required to, but did not, purchase. If Purchaser does not take delivery in full at the expiration of a blanket order, Seller reserves the right to change the price on the balance of said blanket order.

14 **Quantity.** If an order is for products which are to be delivered over a period that extends beyond ninety (90) days, unless otherwise agreed, in writing, Purchaser's orders placed from time to time hereunder shall be for such quantities and/or shipping dates as will permit the shipment of approximately equal aggregate quantities of product in each ninety (90) day period. Purchaser shall give Seller reasonable advance notice for each shipment and Purchaser and Seller shall agree on a reasonable shipment schedule.

15 **General.** These terms and conditions represent the entire understanding of the parties with respect to the subject matter hereof, and supersede and replace all prior discussions, writings or understandings between the parties on such subject matter. However, these terms and conditions and such order and other material may be changed or terminated only by a writing signed by both parties. No written purchase order shall affect or vary these terms and conditions. These terms and conditions shall be governed by and construed in accordance with the laws of the State of New Jersey.