

TERMS AND CONDITIONS OF SALE

1) Any of the terms and provisions of Buyer's Purchase Order which are inconsistent with these Conditions of Sale shall not be binding on the Seller and shall not be considered applicable to any sale made hereunder. No waiver, alteration or modification of any of these provisions on either side of this invoice shall be binding unless in writing and signed by an executive Officer of the Seller.

2) Unless otherwise stated herein, all prices are F.O.B. Seller's plant. Method of delivery and routing are at Seller's discretion, unless specifically designated by Buyer. Notwithstanding any agreement to pay freight delivery of goods purchased hereunder to a common carrier or licensed trucker shall constitute delivery to buyer, and all risk of loss or damage in transit shall be borne by Buyer

3) It is understood that deliveries have been made in accordance with Seller's regular production schedule. Every effort has been made to meet the Buyer's required delivery dates but Seller will not be liable for damages or be deemed to be in default by reason of any failure to delivery or delay in delivery due to any preference, priority, allocation or allotment order issued by the Government, whether Federal, State or Local, or causes beyond its control including, but not limited to, Acts of God or a public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, unavailability of materials or shipping space, delays of carriers or suppliers or delays of any subcontractors.

4) Delivery of ten (10%) more or less than the quantity specified herein shall constitute fulfillment of Buyer's order. Buyer hereby agrees to accept and pay, on a pro-rata basis, for any excess not exceeding ten (10%) percent.

5) Seller reserves the right to increase the prices stated herein to the extent that Seller may deem warranted as a result of increases in the cost of labor, materials, freight rates or overhead, or because of taxes or other charges imposed by governmental authorities upon the production or sale of such products or upon energy or materials used in the manufacturing thereof. Seller agrees that in no event shall increased prices charged to Buyer be more than those charged to other customers of like class purchasing the same articles in similar quantities. Discount provisions otherwise applicable shall continue in force even though the prices may be changed. Price increases shall take effect immediately upon written notice to Buyer and shall apply to all goods subsequently shipped while such increased prices remain applicable.

6) Unless otherwise stated in writing, Seller's prices do not include sales, use, excise or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise or similar tax applicable to the manufacture, sale, purchase or use of the products hereunder shall be paid by Buyer, or in lieu thereof Buyer shall provide Seller with a tax exemption certificate acceptable to the applicable taxing authorities.

7) On goods fabricated, manufactured or produced to individual customer requirements, drawings, specifications or design, Seller has reserved the right to fabricate, manufacture or produce the entire quantity ordered in one production run, although shipments may be made in accordance with the Buyer's requested schedule. In the event of cancellation of such nonstandard goods, any raw material, components, sub assemblies or finished assemblies on quantities equivalent to the full production run of the entire quantity ordered plus normal over-run shall be considered as part of applicable cancellation charges.

8) In the event Seller consents in writing to cancellation, Buyer shall pay Seller, at Seller's option the following as liquidated damages:

- a. Invoice price of all goods which have been identified to the contract, whether such goods have been delivered to Buyer or not
- b. Actual costs incurred by Seller for goods not completed which are allocable to the balance of the contract, including the costs of discharging Seller's liabilities which are also applicable and the costs of materials on hand which were acquired or produced in connection with partially finished work and materials.
- c. A reasonable allowance for profit in connection with goods called for under the contract, but with respect to which production has not begun at the time of cancellation.
- d. Reasonable costs incurred by Seller, including accountants' and attorneys' fees, if any, in making any termination settlement.

9) Seller reserves the right to make delivery in installments, unless otherwise expressly stated herein. All installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of an installment shall not relieve Buyer of its obligations to accept remaining deliveries.

10) Seller reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient by Seller and in such event, all subsequent shipments shall be paid for prior to or at delivery at Seller's option.

11) Seller warrants the goods sold conform with all pertinent specifications, including performance specifications, drawings, and approved sample if furnished. Seller also warrants said goods to be free of defective materials and workmanship. This warranty is in lieu of all other warranties expressed or implied. SELLER MAKES NO WARRANTY THAT SAID GOODS ARE FIT FOR ANY PARTICULAR PURPOSE NOR ANY WARRANTY AS TO THE MERCHANTABILITY OR QUALITY OF GOODS SOLD EXCEPT AS HEREIN STATED. All claims for alleged defects in goods under this warranty shall be deemed waived unless made in writing and delivered to Seller within thirty (30) days after date of shipment, and on any such claims the Seller has the option of inspecting the goods claimed defective at Buyer's place of business or having them reshipped to Seller for inspection. This warranty shall not apply where goods have been subject to misuse, neglect, accident, improper application or have been repaired or substantially altered by others. Transportation charges covering returned goods determined by Seller to be defective and covered by the warranty shall be borne by Seller. No returns will be accepted unless authorized by the Seller.

12) All claims for shortages and damages as a result of shipment must be filed with the carrier.

13) Seller hereby certifies that all goods and services covered by this invoice were purchased and furnished in compliance with the requirements of the Fair Labor Standard Act (of 1938), as amended, and any regulations and orders issued thereunder.

14) SELLER'S LIABILITY SHALL BE LIMITED TO SELLER'S STATED SELLING PRICE PER UNIT OF ANY DEFECTIVE GOODS AND SHALL IN NO EVENT INCLUDE BUYER'S MANUFACTURING COSTS, LOST PROFITS, GOODWILL, OR ANY OTHER SPECIAL OR CONSEQUENTIAL DAMAGES. Seller may at its discretion replace or give the Buyer credit for such defective items.

15) Unless agreed specifically in writing (and not by a printed provision in any business form), all special tools, dies, molds, jigs, fixtures and equipment made or utilized by Seller shall be Seller's property. Should any special tools, dies, molds, jigs, fixtures or equipment be furnished by Buyer or contractually be Buyer's property, they shall be held at Buyer's sole risk, and Seller shall have a lien thereon while in Seller's possession to secure all indebtedness whatsoever due from Buyer to Seller, enforceable by sale or court action, whether or not the costs thereof have in any way been paid by Buyer.

16) Buyer shall indemnify, defending and hold Seller harmless from and against all claims, suits, judgments, costs, losses, expenses (including attorneys' fees) and liabilities from infringement (actual or claimed) of patents, copyrights or trademarks arising from compliance with Buyer's design, specifications or instructions and the fulfillment of Buyer's Order.

17) Seller is not responsible or liable for damage to or loss or destruction of drawings, artwork, samples or other items provided by Buyer or prepared by Seller at Buyer's expense not called for within thirty (30) days after the completion of the order for which they are used.

18) The remedies herein reserved by Seller shall be cumulative and in addition to any other legal remedies. No waiver or a breach of any portion of this contract shall constitute a waiver or continuing or future breach of such provision or of any other provisional hereof.

19) This contract constitutes the entire agreement of the parties, and shall not be assignable by Buyer voluntarily, by operation of law or otherwise without Seller's consent.

20) This contract between the parties shall be governed and shall be construed according to the laws of the State of Minnesota.

21) Anything herein to the contrary notwithstanding any action for alleged breach by Seller of the contract between the parties, including but not limited to an action for breach of the warranties herein set forth, shall be barred unless commenced by Buyer within one (1) year from the date such cause of action accrued.

VinoBrew, LLC
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