

Ioxus Terms and Conditions of Sale

1. **Amount and Type of Goods.** Ioxus, Inc. (the "Seller") and the "Customer" identified on the face of this Purchase Order hereby agree to be bound by the following terms and conditions, together with the Purchase Order (the "Agreement"). Seller agrees to sell and Customer agrees to buy the goods referenced in the Purchase Order at the price set forth therein (the "Goods").
2. **Payment Terms.** Unless otherwise indicated on the Purchase Order, Seller's standard payment terms are Net 30. A deposit of 25% may be required on special orders when the order is placed. This deposit is forfeitable in the event of cancellation on special order items. No discounts are allowed for early payment. Past due balances shall be subject to a service charge (which shall become part of the purchase price for purposes of the remaining provisions of this Agreement) of the lesser of 1½% per month (18% per annum) of the balance exclusive of service charges and the maximum amount legally chargeable. If, at any time, Customer fails to meet its payment obligations set forth in this Agreement, or if Customer's financial condition does not, in Seller's sole judgment, justify the continued shipment of any Goods under the terms of payments set forth in this Agreement, Seller may require full or partial payment in advance or shall be entitled to cancel any Purchase Order then outstanding, without being subject to any cancellation charges or other liability.
3. **Taxes.** Prices are exclusive of all federal, state and local excise, sales, use and similar taxes, if any, and exclusive of all required import duties, licenses and fees on sales outside the United States. If Customer is purchasing for resale, it must furnish a resale certificate card signed by and bearing the name and address of Customer, its resale permit number and shall indicate the general character of the tangible personal property sold by Customer in the regular course of business.
4. **Security Interest.** Seller retains, until Customer performs all of its obligations hereunder, including, without limitation, payment in full of the purchase price, a purchase money security interest in the Goods, including all accessories and replacements thereto and the proceeds thereof, to secure performance of all such obligations of Customer. Customer agrees, upon demand by Seller, to promptly execute any financing statement, applications for registration or other documents necessary and to take any other action deemed necessary or desirable by Seller in order to perfect Seller's security interest. In addition, Customer hereby appoints Seller its attorney-in-fact to prepare, sign and file or record for Customer, in Customer's name, any such documents. Customer agrees to keep the Goods in good order and repair until full purchase price has been paid and shall promptly pay all taxes and assessments upon the Goods. Customer shall not attempt to transfer any interest in the Goods until said purchase price has been paid in full.
5. **Shipping.** Shipping, unless otherwise specified herein, will be the least expensive surface transportation as determined by Seller. Goods are sold Ex-Works Point of Shipment and acceptance of the Goods by Customer shall occur Ex-Works Point of Shipment. Title to the products and risk of loss or damage in transit or thereafter shall pass to Customer upon Seller's delivery of the products to a common carrier for shipment to Customer. Customer shall inspect the Goods upon receipt and notify Seller within 24 hours following delivery when there is evidence of shipping damage. Transportation charges will be collected, or if prepaid, will be subsequently invoiced to Customer. Unless otherwise agreed, Customer is obligated to obtain insurance against damage to the material being shipped. Shipping dates are approximate and Seller reserves the right to make deliveries of product in partial shipments and this Agreement shall be severable as to each such installment. Customer shall give Seller notice within fourteen (14) business days after delivery of any incomplete deliveries or deliveries of defective products. . Any defect in the Goods detected by Customer shall be addressed under the warranty provision of Section 7 herein.
6. **Casualty to Identified Goods.** In the event that the Goods are destroyed or damaged, in whole or in part, prior to the time the risk of loss passes to Customer, the Purchase Order shall be voided and Seller be excused from all obligations hereunder. If the loss is partial Customer shall have the right to accept that portion of the Goods that conform to this Purchase Order.
7. **Warranties.** The Goods sold hereunder, when operated within specifications, are warranted to be free from defects in workmanship and materials for a period of one (1) year. Such limited warranty shall become void upon any modification or repair by Customer or its agents to the Goods or any use or operation of the Goods by Customer, or its agents not accordance with the specification for the Goods. Customer's sole remedy for breach of any warranty shall be limited, in Seller's option, to the repair, replacement or refund of the purchase price of the Goods. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND SELLER DISCLAIMS ALL IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. Repairs or replacement under warranty will be made free of charge provided that Seller is timely notified pursuant to Section 6 and that Seller's inspection discloses defects within the warranty coverage and provided that any damage caused by or defects are not the result, in Seller's judgment, of accident, force majeure, abuse, misuse or unauthorized modifications or repairs performed by Customer or its agents. If, in Seller's judgment, only a portion of the damage is due to the cause stated above, only the repairs covering that portion of the damage will be charged to Customer. Notice of such charges will be provided to Customer in writing after completion of the warranty repairs. In the event of any claim under warranty, the damaged portion of the Goods must be shipped intact to Seller prepaid at Customer's expense showing the Return Material Authorization Number (RMA) obtained by Customer from Seller prior to returning the damaged portion of the Goods. If the Goods are found to have defects, Seller will pay the return shipping charges. Customer will be charged up to \$1,000.00 for any returned Goods found to have no defects.
8. **Assistance of Seller.** No statement or recommendation made or assistance given by Seller or its agents to Customer or its agents in words, in action or in brochures, catalogues or technical documents concerning the use, capacity or application of any of the Goods by Customer or the practicability of any design, suggestion or recommendation of Seller adopted by Customer, shall constitute a warranty by Seller or the waiver by Seller of any provisions herein. No such statement or recommendation made or assistance given by Seller shall affect Seller's liability hereunder.
9. **Termination.** If Customer breaches this Agreement, or violates, or is officially charged with a violation of any law, regulation or ordinance which may govern the sale, handling or disposition of any of the Goods or if Customer becomes insolvent, or makes any assignment for the benefit or creditors, or is adjudged bankrupt, or if a receiver or trustee of Customer's property is appointed, Seller may, at its sole discretion, terminate this Agreement, and may refuse to make any further deliveries and shall be entitled to all remedies of a secured party under the Uniform Commercial Code. In the event that any additional customs duty or tariff shall be imposed between the date hereof and the date of arrival at the appropriate point of entry into Customer's country, Seller shall have the right to terminate this Agreement and any future deliveries hereunder unless Customer shall pay such additional duties or tariffs.
10. **Customer's Exclusive Remedy.** In the event of breach or repudiation of this Agreement by Seller, except as provided in Sections 6 and 7, Customer's sole and exclusive remedy shall be the right to seek damages limited to the difference between this Agreement and the market price of the Goods, and Customer shall not have the right to "seek cover" by contracting for substitute Goods. FURTHER, SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO DAMAGE TO OR LOSS OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL OR CLAIMS BY CLIENTS OF CUSTOMER. Any of the foregoing terms defined in the Uniform Commercial Code and/or applicable case law of the State of New York, USA shall have the meanings set forth therein.
11. **Infringement.** Customer, in furnishing specifications to Seller, agrees to indemnify and hold Seller and its agents harmless against any claim that the specifications in any way infringe any patent, trademark, or other intellectual property or proprietary right of any other person due to Seller's manufacturing of the Goods according to the specifications provided by Customer.
12. **Intellectual Property.** To the extent the Goods contain intellectual property or other proprietary rights of Seller, Customer is granted only a non-exclusive, non-transferable license, non-assignable to the extent necessary for the standard commercial use of the Goods. Customer may not copy, reverse engineer, decompile, decode, distribute or otherwise utilize such intellectual property or proprietary rights except as expressly authorized in this Agreement.
13. **Force Majeure.** Seller shall not be responsible for delays in delivery or any failure to deliver due to causes beyond Seller's control including but not limited to acts of God, war, mobilization, civil commotions, riots, embargoes, domestic or foreign governmental regulations or orders, fires, floods, earthquakes, strikes, lockouts and other labor difficulties, or shortages of or inability to obtain shipping space or transportation. In the event of any such delay, the period for performance by Seller shall be extended for a period equal to the time lost by reason of any of the foregoing force majeure events. During any period of shortage for any cause, Seller may pro-rate it supply of goods among its internal demand and its customers, at Seller's sole discretion.
14. **Arbitration of Claims.** All controversies and claims arising out of or relating to this Agreement, or breach thereof, shall be settled solely by arbitration held in the City of Binghamton, State of New York, in accordance with the rules set forth by American Arbitration Association and any judgment upon any award thereupon may be entered in any court having jurisdiction thereof. Written notice of any claim shall be given in writing sixty (60) days of the date upon which it arise.
15. **Choice of Laws; Venue.** This Agreement and all of the rights and obligations of the parties hereto, shall be governed by the laws of the State of New York, USA including the Uniform Commercial Code as enacted and in force in the State of New York on the date of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Customer and Seller irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in Binghamton, New York, with respect to any legal action or proceeding pursuant to this Agreement and waive any objection that such forum is inconvenient.
16. **U.S. Export Restrictions.** Customer may not export or re-export the Goods or any copy or adaptation thereof from the United States in violation of any applicable laws or regulations, such as those administered by the Office of Export Administration of the U.S. Department of Commerce.
17. **Government Restricted Rights Legend.** To the extent that the technology, intellectual property rights, software, and documentation contained in or represented by the Goods have been developed at private expense, the use, duplication or disclosure thereof by the United States Government is subject to restrictions as set forth in FAR 52.227-19(c) or subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 52.227-7013 and/or in similar or successor clauses in the FAR, or the DOD or NASA FAR supplement. Unpublished rights are reserved under the Copyright Laws of the United States.
18. **Entire Agreement; Waiver; Validity.** This Agreement constitutes the entire contract and exclusively determines the rights and obligations of both parties hereto, any prior course of dealing, customs or usage of the trade or course of performance notwithstanding to the contrary, and may not be modified except by a writing signed by Seller's authorized agent. By accepting the Goods from Seller, Customer acknowledges that notwithstanding any language in Customer's forms to the contrary or the sequence of dispatching or receiving of forms, any conflict between the terms contained herein and the terms contained in any form of Customer shall be resolved in favor of the terms herein. No failure to assert rights or course of conduct by Seller shall constitute a waiver by Seller of any of its rights. If any provision(s) of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
19. **Assignment.** This Agreement is not assignable in whole or part without the written consent of Seller, which consent may be withheld in its sole discretion; any attempt to assign any duties, right or obligations of this Agreement without such consent shall be considered null and void.