

GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT

FIPA INC., CARY NC 27513

1 General

These Terms and Conditions of Sale (“Terms and Conditions”) form an integral part of any acceptance by FIPA Inc. (“Seller”) of any purchase order (“Order”) placed and sales transaction resulting therefrom (“Transaction”) and shall supersede all printed terms and conditions on any request for proposal, purchase order, or other form, if any, of or presented by a customer of Seller (“Buyer”) and any other inconsistent terms submitted by a Buyer prior to acceptance by Seller of an Order. These Terms and Conditions may not be varied or supplemented unless agreed to in writing by a duly authorized representative of Seller. No services or sales representative shall have such authority. Failure of Seller to object to conflicting or different provisions contained in any Order or other writing of Buyer shall not be construed as a waiver of these Terms and Conditions nor an acceptance of any terms and conditions of Buyer. Except only as otherwise agreed in writing by a duly authorized representative of Seller, the sale of any of Seller’s products (“Products”) shall be governed only by these Terms and Conditions. Buyer shall be deemed to have accepted these Terms and Conditions if Buyer accepts any shipment of Products to which these Terms and Conditions relate. Seller hereby expressly rejects any portion of any Order that attempts to modify these Terms and Conditions.

2 Order and Acceptance

Seller’s advertisement of Products in Seller’s online store, accessible at www.fipa.com/us (“Web Shop”), shall constitute a non-binding invitation to submit an Order via the Web Shop.

Via Web Shop, Buyer provides a binding purchase offer by clicking the button [“Order now with obligation to pay” / “buy”]. Buyer may check and correct the order before placing the order.

After receipt of the purchase offer, Buyer shall receive an automatic email which constitutes Seller’s confirmation of receipt. This confirmation of receipt shall not constitute acceptance of the Buyer’s purchase offer.

Orders are binding only after acceptance by Seller (“Acceptance”). Acceptance is declared in dispatching the Products. Buyer acknowledges that Seller reserves the right to reject any Order for any reason or for no reason, including non-authorization of payment.

3 Prices, Contents and Descriptions

Prices are as stated in the Web Shop effective as of the date of issuance of an Order. Web Shop prices are subject to change without notice and shall be effective upon publication. All prices are valid ex works Seller’s warehouse, plus applicable transportation costs, expenses, packaging, dispatch and, if applicable, insurance of Products in transit.

All Web Shop information, including, but not limited to content, descriptions, images, references, features, specifications and services are subject to change at any time without notice. Certain information, including, but not limited to weights, measures, and other descriptions are approximate and are provided for convenience purposes only.

4 Payment; Credit; Default on Payment

- a) For Buyers with established credit, the terms of payment are net thirty (30) days from the date of invoice. If credit is not established, payment plus freight charges reasonably estimated by Seller shall accompany an Order.
- b) Seller reserves the right to at any time revoke any credit extended to Buyer if Buyer fails to pay for any shipments when due. If, in Seller's opinion, there is a material adverse change in Seller's financial conditions, Seller shall have the right to suspend further shipments until Buyer furnishes adequate assurance satisfactory to Seller of Buyer's ability to pay.
- c) Payment terms are specified on Seller's invoice ("Invoice").

Using the Web Shop, payment can be made using any of the following methods:

Advance payment, credit card, PayPal or purchase on account

Seller shall choose which of the payment methods are available. In particular, Seller reserves the right to carry out deliveries only on payment in advance.

If payment is made by credit card, the purchase shall be charged to the card when the order is placed.

If payment is made via PayPal, Buyer will be referred to the website of the online provider PayPal during the order process. To settle the invoice amount via PayPal, Buyer must be registered with PayPal.

Further information will be provided during the order process.

- d) Any Invoice not paid when due shall be
 - (i) subject to a late payment charge of 1.5% (one point five percent) per month, or, if such rate is greater than the maximum rate permitted by applicable law, then at the highest rate allowed by applicable law until paid in full and
 - (ii) Buyer shall pay all costs of collection, including legal fees. Seller reserves the right to seek any additional remedies as allowed by law.
- e) Cash or anticipation discounts are not allowed.
- f) Delinquent account Orders will not be processed until account balance is current.

5 Taxes

Buyer shall pay, in addition to any invoiced amount, all taxes, if applicable, upon the production, sale, shipment, delivery, provision or use of the Products, including, without limitation, all federal, state, or local property, license, privilege, sales, use, excise or gross receipts taxes or other like taxes and tariffs (excluding Seller's income taxes based on the sale of Products). In the event that Seller is required to pay any such taxes, Buyer shall indemnify, pay or reimburse Seller on demand for such payments and any penalties or fees related thereto.

6 Shipment; Risk of Loss; Shipping Schedule

- a) Shipments shall be made F.O.B. Cary, North Carolina, unless otherwise specified in writing.
- b) The shipment shall be deemed accepted in good condition by the common carrier ("Carrier") and title to, and risk of loss or theft, damage or destruction to, the Products shall pass and shift to Buyer upon releasing the Products to the Carrier and upon that acceptance by the Carrier.
- c) Seller will use commercially reasonable efforts to ship the Products as agreed upon by Seller and Buyer. However, Buyer acknowledges and agrees that lead time will vary according to availability of supply, delays in transportation, manufacturing problems and other conditions, and, consequently all delivery dates communicated by Seller are estimates only. Delay in delivery of any shipment of Products shall not relieve Buyer of its obligations to accept such shipment or any other shipment. Under no circumstances shall Seller on account of late delivery or non-delivery be liable to Buyer, its agents or any other persons for any damages set forth in Section 11(f) below.
- d) Seller shall invoice all freight, handling and insurance charges to Buyer.
- e) For collect shipments via UPS, FedEx or other rush carrier, Seller shall bill all freight charges to the collect account number provided by Buyer. All collect shipments are NOT insured. Buyer must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Buyer. Seller assumes no responsibility for any such loss or damage.
- f) For truck shipments, Seller shall bill all freight charges to the account number provided. All truck shipments are NOT insured. Buyer must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Buyer. Seller assumes no responsibility for any such loss or damage.
- g) All shipments shall be made by a Carrier of Seller's choice. Any special arrangements requested by Buyer shall be at Buyer's additional expense.
- h) Seller reserves the right to deliver in installments. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.

7 Inspection; Claims; Return

a) Buyer shall inspect any shipment of Products immediately upon delivery with respect to quantity, quality and defects. If Buyer discovers any quantity or quality deviation or any defect, Buyer shall notify Seller of such deviation or defect and shall also supply invoice number and date of invoice. Such notice shall be given to Seller in accordance with Section 20 below within five (5) business days of receipt of Products. If damage or loss is ascertainable by Buyer upon delivery, Buyer must file a claim with the carrier and notify Seller in writing as set forth above within two (2) business days after delivery. Notations regarding such claim shall be made on all copies of Carrier's waybill and the driver must sign all copies to acknowledge notification of the claim. For any defects which are not immediately apparent, Buyer shall notify Seller within five (5) business days of discovery of a defect. Upon Seller's request, Buyer shall furnish to Seller all original delivery records so as to assist Seller in assessing the validity of the claim.

ANY CLAIM NOT SUBMITTED IN STRICT COMPLIANCE WITH THIS PROVISION SHALL BE DEEMED CONCLUSIVELY AND FINALLY WAIVED BY BUYER.

b) Buyer shall not return any Products without prior written approval of Seller, including a Seller furnished Return Material Authorization number of applicable.

c) Time is of the essence for purposes of this Section 7.

8 Cancellations

An Order may not be cancelled without Seller's written consent. In the event of such cancellation, Buyer agrees to pay to Seller, upon presentation of invoices, all costs and expenses incurred by Seller and damages to Seller prior to and as a result of the cancellation. Such costs shall include any cancellation charges as may be imposed on Seller by Seller's suppliers or subcontractors.

9 Force Majeure

Seller shall not be liable for damages as a result of any delay or failure of delivery due to any cause beyond Seller's control, including, without limitation, acts of nature or God, act of Buyer or any of its representatives, any statute, ordinance, regulation, order or other governmental agency or judicial action, fire, storm, flood, earthquake, explosion, accident, war or rebellion, sabotage, epidemic, quarantine restrictions, strike, riot, terrorism, war, transportation embargoes, failure or delay in transportation or inability to obtain or delay in obtaining necessary labor, materials, fuel or manufacturing locations or failures of manufacturing machinery. In the event of any such delay, the date of delivery shall be extended for a period equal to the time loss by reason of such delay and, if such delay is caused by act of Buyer or any of its representatives, Seller shall be reimbursed for any additional costs arising from such delay.

10 Limited Warranty

- a) Seller provides for a limited warranty for each Product for a period of six (6) months from the date of purchase for any defect in workmanship or materials under normal use, provided that the Product has been installed and used in accordance with the manufacturer's guidelines and instructions unless otherwise stated. Buyer must notify Seller in writing with respect to any warranty claim and furnish proof of purchase, upon which notification Seller shall determine the validity of such claim. Seller shall have the right, in its sole discretion, to correct the defect or to deliver Products that are free of any such defect. Seller retains the right to at least two (2) attempts to remedy any limited warranty claim. Replaced Products shall become the property of Seller. Any limited warranty repairs or substitutions of Products shall not extend the original limited warranty period. Wear parts are excluded from Seller's limited warranty.
- b) Minor defects shall not give rise to a limited warranty claim. A "minor defect" is a defect upon which the value or the functionality of the Product is only insignificantly reduced.
- c) Any claims due to modifications to the Products made by a person other than Seller, improper or inadequate use, faulty assembly or production start-up, excessive stress, natural wear and tear, faulty or careless handling, faulty or improper maintenance, inadequate expendables, chemical, electrochemical or electrical influences and transport damage shall be excluded from Seller's limited warranty.
- d) Buyer shall bear any additional costs incurred by Seller for limited warranty repairs or replacements, including but not limited to costs for transport, labor and material, as they are incurred due to the fact that the Products were subsequently taken to a location different from the place of original delivery.
- e) EXCEPT AS PREVIOUSLY SET FORTH IN THIS SECTION 11(f), SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, CONCERNING ANY PRODUCT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY.

11. Damages Disclaimer and Limitation of Liability

IN NO EVENT SHALL SELLER BE LIABLE TO ANY BUYER OR ANY OTHER PERSON FOR ANY (A) INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL OR (B) DIRECT DAMAGES TO BODY, HEALTH OR PROPERTY FOR ANY MATTER ARISING OUT OF OR RELATING TO THE PRODUCTS, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF ABC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S TOTAL AGGREGATE LIABILITY FOR DAMAGES EXCEED THE TOTAL COMPENSATION PAID BY BUYER TO SELLER FOR THE PRODUCTS.

12. Intellectual Property

- a) Buyer acknowledges Seller's exclusive right, title and interest in Seller's patents, trademarks, service marks, trade names, emblem, designs and methods relating to Products (the "Intellectual Property"). Buyer acknowledges that Seller has certain ideas and information concerning financial matters and trade secrets and corporate proprietary information, written and unwritten (the "Information and Ideas") which Seller is willing to disclose to Buyer from time to time as it becomes necessary to promote a Transaction. Buyer shall not acquire any right, title or interest in the Intellectual Property or the Information and Ideas by virtue of any Transaction under these Terms & Conditions, or at any time describe or represent itself to others as having such right, title or interest. Should any law or regulation vest Buyer with any rights and any of the Intellectual Property or the Information and Ideas, Buyer hereby assigns and agrees to assign to Seller all such rights contemporaneously with their vesting. Buyer shall promptly notify Seller of any and all infringements of the Intellectual Property or the Information and Ideas of which it becomes aware and will assist Seller in taking action against any such infringements.
- b) Buyer acknowledges and agrees that irreparable harm would be suffered by Seller in the event of a breach of this Section 13 and that Seller shall have the right to seek injunctive relief in the event of a breach or threatened breach of this Section. Buyer agrees that the rights of Seller provided in the sentence above and under the terms of these Terms and Conditions shall be in addition to, and not in lieu of, all other rights Seller may have at law or in equity to protect the Intellectual Property and the Information and Ideas.

13. Indemnification

Buyer hereby agrees to indemnify, defend, at Buyer's expense, and hold Seller harmless from and against all loss, costs, damages or expenses arising out of any Buyer's breach of any term of an Order or Acceptance governed by these Terms and Conditions or any provision thereof, including but not limited to alleged infringements of patents, trademarks, copyrights or any other intellectual property right relating to the use of Products.

14. Default

Seller reserves the right to cancel all or any part of a current Order and any other Orders outstanding, without liability to Buyer, if Buyer fails to perform under any applicable provision of these Terms and Conditions or of any applicable Order or Acceptance and the failure is not cured within ten (10) days after notice to Buyer by Seller.

15. Arbitration

In the event that the parties are unable to agree on any matter for which agreement is required under an Accepted Order, including these Terms and Conditions, or if either party commits a default hereunder, whether material or immaterial, either party shall have the right to submit the matter to binding arbitration in accordance with the rules of the American Arbitration Association (“AAA”), as then in effect. Each party shall pay one-half of the deposit required by AAA. If the matter in dispute exceeds fifty Thousand Dollars (\$50,000), the matter shall be considered by a panel of three (3) arbitrators. If there are three (3) arbitrators, the parties shall request, within fifteen (15) days of receipt of notice of one party to the other party requesting arbitration, from AAA a list of approved arbitrators and, by way of elimination, shall agree on three (3) arbitrators. If the parties agree on less than three (3) arbitrators, they shall request a second list of approved arbitrators from AAA and again follow the process in the preceding sentence to select the remaining arbitrator(s). If the parties fail to elect two (2) arbitrators, then the AAA shall select the arbitrator panel. If the parties elect two (2) arbitrators, then such arbitrators shall elect the third arbitrator. If the matter in dispute is twenty Thousand Dollars (\$_20,000) or less, the matter shall be considered by a single arbitrator. The election of a single arbitrator shall be made in accordance with the process for selecting three (3) arbitrators. The non-prevailing party shall bear the costs of the arbitrator(s), witness fees, attorneys’ fees and all other costs associated with the arbitration proceeding. The arbitration proceeding shall occur in Atlanta, Georgia. The Federal Arbitration Act shall be applicable to the arbitration proceedings. The arbitrator(s) shall apply the law of the state of North Carolina.

16. Jurisdiction Venue

For purposes of injunctive relief or should arbitration not be available, in any legal action relating to the sale and shipment of Products under these Terms and Conditions, Buyer irrevocably agrees and consents (i) to the exercise of jurisdiction over it by the courts of the State of North Carolina, United States of America.; and (ii) that if Buyer brings the action, it shall be instituted in one of the courts specified in Subsection (i) above. Service of process provided to Buyer in accordance with Section 20 below shall be effective and sufficient to establish jurisdiction and venue in such court in any such action. Should arbitration not be available, Seller may institute legal action in any appropriate jurisdiction.

17. Governing Law

These Terms and Conditions and any Transaction between Seller and Buyer under these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of North Carolina, United States of America.

18. Severability

If any provision of these Terms and Conditions shall be judged by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication shall not affect or modify any other provision of these terms and the effect thereof shall be confined to the provision as to which such adjudication is made.

19. Notice Formal Requirements

Any declaration or other communication required or permitted by these Terms and Conditions to Seller must be given in writing and must be delivered by personal delivery (including personal delivery by overnight courier such as Federal Express, DHL, or similar overnight courier), first class mail (registered or certified), telecopy or e-mail (with a copy sent by personal delivery or first class mail), in each case addressed to FIPA Inc., 1855 Evans Rd, Cary, NC 27513, Fax: (919) 573-0871.

20. Assignment

Buyer shall not assign any rights under any Transaction subject to these Terms and Conditions without the prior written consent of Seller. Any such attempted delegation or assignment shall be void.

21. Headings

The headings contained in these Terms and Conditions are included for mere convenience of reference and shall not affect the language included herein.

22. Amendment

Seller reserves the right to amend these Terms and Conditions from time to time.