

TERMS AND CONDITIONS OF SALE



American VULKAN Corporation

2525 Dundee Road | Winter Haven | FL 33884

§1 ACCEPTANCE

All sales are expressly conditioned on Buyer's agreement to the terms and conditions on order acknowledgments and quotations from American VULKAN Corporation (AVC). No additional or different terms apply unless expressly agreed to by AVC in writing. AVC hereby gives notice of its objection to any different or additional terms. Acceptance of or payment for goods constitutes Buyer's agreement to AVC's terms and conditions, and Buyer's further assent to any additional or different term contained herein is not required.

§2 PRICES

Any offer or invitation to offer expressed by a quotation expires automatically sixty (60) days from the quotation date, unless otherwise negotiated. All terms and conditions are subject to change during this period, upon notice from AVC. Prices are based on quantities specified and delivery is subject to prior sales unless otherwise specified on order acknowledgments or quotations. All excise, sales, use and other similar taxes required to be collected by AVC will be added to the price, unless an appropriate exemption certificate is timely received. Prices include domestic shipment packaging. Additional charges will be made for export packaging.

§3 TERMS

Unless otherwise specified on an order acknowledgment or quotation, terms are net thirty (30) days subject to approved credit, payable in U.S. funds, and all products are sold F.O.B. point of manufacture. Title and risk of loss pass to Buyer upon delivery to the carrier for shipment. Invoices not paid in accordance with terms are subject to interest charges at the rate of 1 1/2 percent per month unless prohibited by law, in which event invoices will be subject to interest charges at the maximum legal contract rate. Minimum invoice charge is \$150.00. A surcharge of 18% will be added to the freight bill for all direct shipments from another VULKAN facility to the end customer.

§4 DRAWINGS AND SPECIFICATIONS

All orders will be manufactured to AVC part numbers. Any mention of Buyer's part number is for reference only and the applicable AVC drawings and specifications (whether specifically referred to or not) will govern.

§5 TOOLING

Tooling required for the manufacture of custom designs may be quoted separately as a one-time charge to Buyer. Charges will be invoiced upon completion of manufacture of the tooling. The tooling is to remain the property of AVC. AVC will maintain the tooling at no expense to Buyer except for changes in product design and/or dimensions and AVC reserves the right to dispose of any tooling inactive for two years without further notice.

§6 DELIVERY

AVC will have the privilege of delivery ahead of any scheduled delivery date should AVC find it advisable or necessary, unless other times are specifically agreed to in writing. ON ACCEPTANCE OF AN ORDER FOR CUSTOM DESIGNS AVC RESERVES THE RIGHT TO DELIVER UP TO 10 PERCENT UNDER THE QUANTITIES ORDERED, UNLESS OTHERWISE NEGOTIATED AND SPECIFIED. Delivery will be made upon completion of manufacture unless otherwise negotiated. All products will be delivered F.O.B. point of manufacture. A minimum of forty-five (45) days notice is required to effect any change in customer requested delivery date. AVC will make every effort to comply with less than forty-five (45) days notice but retains the right to delivery and/or invoice based on prior scheduled dates.

§7 RETURNED MATERIAL

Material may not be returned without the prior approval of AVC. Transportation costs are to be prepaid. AVC assumes no responsibility for accepting goods for credit or exchange but may do so in specific cases for certain standard, unused, and unaltered items when agreed to by authorized factory personnel; where goods are accepted for credit or exchange, a minimum twenty (20) percent restocking charge will be imposed. If material is being returned for repair or rebuilding, it must be accompanied by a Purchase Order as required by AVC's service contract. Either the copy of the Purchase Order or a tag appended to the returned material should detail what repair or rebuilding is to be effected.

§8 DELAYS

AVC will not be liable for any defaults, damage or delays in fulfilling orders caused for any reason including, but not limited to acts of God, strike, riot, fire, flood, government control or regulation, embargoes, wrecks or delays in transportation or delays of our subcontractors or suppliers in furnishing materials or supplies. Delivery dates given in advance of actual delivery are estimated, and deliveries will be made subject to prior orders on file with AVC.

§9 WARRANTY

(a) AVC warrants its products against defects in workmanship and material for a period of one year (365 days) from date of delivery. Replacement or repair under this warranty will be made only after AVC completes inspection of the part or product at its factory. Liability under this warranty will extend only to the replacement or repair of any part or product determined by AVC as not conforming to this warranty. All products must be returned to AVC, freight prepaid.

(b) This warranty will not apply to any product which has been repaired or altered without AVC's knowledge and written consent, or operated on installed contrary to any instruction, or subjected to misuse, improper maintenance, or which has been damaged by accident or negligence.

(c) AVC does not warrant, nor is it responsible for the performance assurance of its products. Ratings are provided in current catalogs only to assist Buyer in its selection of the product. Application engineering assistance is offered only for Buyer's application of AVC's products. Custom designed products are designed to incorporate the physical and performance characteristics specified by Buyer, and assurance of these characteristics may be accomplished through manufacture of a prototype by AVC and a test or qualification program by Buyer. It is the Buyer's responsibility to perform such tests as Buyer may believe to be necessary prior to quantity production of the product to assure that the product will function as desired under actual operating conditions.

In all events because the actual performance characteristics of Buyer's equipment cannot be reproduced in AVC's testing laboratories, risk of performance characteristics under Buyer's actual operating conditions for all of AVC's products and component parts is on the Buyer.

(d) If the product or component parts thereof are the products of manufacturers other than AVC, AVC makes NO WARRANTY, EXPRESS OR IMPLIED, concerning the product and with respect to AVC, all such goods are sold WITH ALL FAULTS, AND "AS IS, WHERE IS" and AVC assigns to Buyer any warranties issued by such manufacturer of those products.

(e) The warranties contained in these Terms and Conditions are made in lieu of all other warranties, express or implied, and there are no other warranties that extend beyond this express warranty. THERE ARE NO WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

§10 REMEDIES

Remedies of repair and replacement set forth in these Terms and Conditions will be exclusive of all other remedies. The liability of AVC with respect to any contract or sale or anything done in connection therewith, whether in contract, tort (including AVC's NEGLIGENCE), under any warranty or otherwise will not exceed the difference between the price of the product or part on which such liability is based and the value of the product at the time of its delivery to Buyer, but in no event to exceed the original purchase prices. If AVC fails to deliver the product, Buyer's sole remedy will be to purchase goods in substitution of the goods not delivered, unless AVC can complete delivery within the time Buyer is expected to take delivery to the substitute goods, in which case Buyer must take delivery from AVC. AVC will not be liable for special, indirect, incidental or consequential damages.

§11 LIMITATIONS

Any claim of any kind by Buyer based on or arising out of a contract or otherwise will be barred unless asserted by Buyer by the commencement of an action within twelve (12) months after the delivery of the product or other event, action, or inaction to which such claim relates, whichever first occurs. This provision will survive any termination of the contract however arising.

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§12 VENUE/ATTORNEY'S FEES/SERVICE CHARGES/JURY TRIAL/APPLICABLE LAW

In any action between Buyer and AVC, whether sounding in contract, tort or otherwise, if AVC is the prevailing party, AVC will be entitled to recover its reasonable attorney's fees and expenses including fees incurred in arbitration mediation, at trial, on appeal or post-judgment. Any provision in any final judgment rendered in favor of AVC will contain a provision allowing for the later assessment of attorney's fees and cost incurred in the collection of any judgment. If Buyer does not satisfy the judgment when entered, all past due amounts are subject to service charges of 1 1/2 percent per month or the maximum lawful contract rate permitted by law. The venue of all actions between Buyer and AVC will be in a court of competent jurisdiction in Orange or Polk County, Florida, at AVC's option. Buyer consents to the jurisdictions of the courts of the State of Florida, and specifically WAIVES any right to trial by jury in any action brought by or against Buyer. The law of the state of Florida shall govern the rights of AVC and Buyer under this agreement.

§13 RISK OF LOSS

All sales are made F.O.B. point of manufacture and each delivery will be considered a separate and independent transaction. Buyer has risk of loss after delivery at F.O.B. point.

§14 CANCELLATION

An order may not be canceled at less than 100 percent of purchase price if within thirty (30) days of completion. Otherwise, cancellation will be accepted by AVC, and Buyer will be invoiced immediately for cancellation charges covering all costs, damages, commitments and profit. Failure of Buyer to accept delivery under the terms and conditions specified herein or in a quotation, and, or in the alternative, entered Sales Order will be considered a breach of contract. AVC's damages for such breach of contract include all costs, damages, commitments and profit.

§15 AVC'S REMEDIES

AVC retains all remedies authorized by the Florida Uniform Commercial Code, as well as those set forth in this agreement. AVC's rights are cumulative, not alternative.

§16 STOP WORK

A stop-work order will be considered as a cancellation by AVC and the provisions outlined above for cancellation will apply.

§17 WAIVER

No waiver, alteration, or modification of any of these provisions will be binding, unless in writing and signed by an employee of AVC, who has written authorization to do such act.

§18 INTELLECTUAL PROPERTY

If the goods sold hereunder are to be prepared for manufacture according to Buyer's specification. Buyer shall indemnify AVC against any claims or liability for infringement or misappropriation of any patent, trademark, copyright, trade secret, or any other Intellectual Property right, on account of such manufacture. Except as provided in the preceding sentence, AVC's obligation to Buyer shall be to reimburse Buyer for damages awarded against it as a result of any Intellectual Property infringement or misappropriation action, conditioned on the following: (1) AVC must be notified promptly in writing by Buyer of any notice of such claim; (2) AVC may, at its option, participate in the defense of such an action, and if AVC does participate, it will have sole control of the defense in any action on such claim and all negotiations for its settlement or compromise; and (3) should AVC's product become or in AVC's opinion be likely to become the subject of a claim of infringement or misappropriation the Buyer will permit AVC, at AVC's option, to replace or modify the product so that it becomes not infringing or to grant Buyer a credit for such product, as depreciated, and accept its return.