

ELLIS MANUFACTURING COMPANY

TERMS AND CONDITIONS

1. All orders are subject to approval and acceptance by Ellis Manufacturing Company's Sales Department.
2. Acceptance of orders, whether oral or written, is based on the express condition that Buyer agrees to all of the terms and conditions contained herein. Acceptance of delivery by Buyer will constitute Buyer's assent to these terms and conditions. These terms and conditions represent the complete agreement of the parties, and no terms and conditions in any way adding to, modifying or otherwise changing the provisions stated herein shall bind Ellis Manufacturing Company unless made in writing and signed and approved by an officer or other authorized person at the home office of Ellis Manufacturing Company in Midland, Texas. No modification of any of these terms will be effected by Ellis Manufacturing Company's shipment of goods following receipt of buyer's purchase order, shipping request or similar forms containing printed terms and conditions conflicting or inconsistent with the terms herein.
3. All prices are F. O. B. point of distribution unless otherwise specified, and are subject to adjustment, with notice to Ellis Manufacturing Company's prices in effect at the time of shipment. Any increase in transportation rates or any changes in routing resulting in an increase in transportation costs shall be paid and borne by Buyer.
4. Unless otherwise specified, terms are NET 30 days. A service charge of the lesser of 1% per month or the applicable maximum legal rate will be added to all past due accounts.
5. Ellis Manufacturing Company shall not be liable for delays in shipment or default in delivery for any cause beyond Ellis' reasonable control including, but not limited to, government action, shortage of labor, raw materials, production or transportation facilities, labor difficulty involving employees of Ellis Manufacturing Company or others, fire, flood, or other casualty. In the event of any delay, in Ellis Manufacturing Company's performance due in whole or in part to any cause beyond Ellis' reasonable control, Ellis shall have additional time for performance as may be reasonably necessary under the circumstance. Acceptance by Buyer of any goods shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery of such goods.
6. All taxes and excises of any nature, whatsoever, now or hereafter levied by governmental authority upon the sale or transportation of any goods covered hereby, shall be paid and borne by Buyer.
7. Delivery of goods by Ellis Manufacturing Company to carrier at point of distribution shall be deemed delivery to Buyer, and thereupon title to such goods, and the risk of loss or damage, shall be Buyer's. Any claim by Buyer against shortages or damage occurring prior to such delivery must be made in writing within five (5) days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from Ellis in the condition claimed.

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8. Ellis Manufacturing Company warrants that the goods furnished hereunder will be free from defects in material and workmanship and will conform to the materials and design specified by Ellis Manufacturing Company, except that component parts manufactured and warranted by others, and so identified herein, shall be subject only to the warranties of the manufacturers of said parts.

THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANT ABILITY OR FITNESS.

Ellis Manufacturing Company shall not be liable for incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling, or use of the goods, or from any other cause relating thereto, and Ellis' liability hereunder in any case is expressly limited to the replacement (in the form originally shipped) of goods not complying with this agreement, or, at Ellis' election, to the replacement of, or crediting Buyer with, an amount equal to the purchase price of such goods whether such claims are for breach of warranty or negligence.

Any claims by Buyer with reference to the goods sold hereunder for any case shall be deemed waived by Buyer unless submitted to Ellis Manufacturing Company in writing within thirty (30) days from the date Buyer discovered, or should have discovered any claimed breach.

9. Ellis Manufacturing Company reserves the right to require payment for any shipment hereunder in advance, or satisfactory security, if the financial responsibility of Buyer becomes unsatisfactory to Ellis. If Buyer fails to make payment in accordance with the terms of this agreement, or fails to comply with any provision hereof, Ellis may, at its option, (and in addition to other remedies) cancel any unshipped portion of this order, Buyer to remain liable for all unpaid accounts.
10. Ellis Manufacturing Company will use all reasonable efforts to comply with Buyer's request as to method of shipment, but Ellis reserves the right to use an alternate method of transportation or route of shipment if substantial delay might otherwise occur. In such cases, Ellis will notify Buyer of such changes as soon as reasonably possible.
11. Delivery by truck will be made to the nearest point reasonably accessible by truck as determined by the driver.

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12. Freight charges shall be handled in the following manner: Ellis will pay the freight charges when an order of \$1000.00 or more exists. The Buyer shall be responsible for the payment of freight when the following conditions exist: the above conditions are not met, shipment is sent by bus or air, Saturday delivery is required, LTL trucking, UPS 3 day select, or for any other special freight handling requests.
13. The agreement cannot be terminated, and goods cannot be returned without Ellis' prior written consent.
14. Waiver by Ellis of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time.
15. This agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the Laws of the State of Texas, including the Uniform Commercial Code. Any claim by Buyer arising hereunder, which cannot be amicably resolved, shall be tried in the appropriate state or federal court in Midland, Texas. Any claim by Ellis arising hereunder may, at Ellis' option, be tried in the appropriate state or federal court in Midland, Texas, to the jurisdiction of which Buyer hereby submits.