

Faymonville Distribution US Inc - GENERAL TERMS AND CONDITIONS OF SALE

1. General

These Terms and Conditions conditions shall apply to the exclusion of all others, and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms and Conditions represent the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties. These Terms and Conditions expressly limit acceptance to these provisions. No order shall have any force or effect until acknowledged in writing by Seller. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the provisions of these Terms and Conditions is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to the provisions contained in these Terms and Conditions. Unless otherwise stated herein, Buyer's receipt of any portion of the goods ("Goods") shall constitute acceptance of these Terms and Conditions, unless Buyer returns all such Goods within twenty-four (24) hours of receipt of Goods.

2. Offers

2.1. Seller's offers and other statements are made without obligation, unless confirmed in writing.

2.2. Seller reserves the right to change the design or shape of the Goods before delivery to the extent that the Goods and their appearance are not fundamentally changed.

2.3. Any information, electronically stored or otherwise, in manuals, handbooks, brochures, instructions or other materials, as to performance, weights, running costs, speeds, etc. are deemed to be estimates.

3. Delivery/Force Majeure.

3.1. All shipping and delivery dates are estimates and are based upon prompt receipt of all necessary information from Buyer. Delays in securing Buyer's approval of necessary specifications or samples of products and materials shall, if Seller so chooses, extend the date of delivery. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays in delivery.

3.2. Should Buyer cancel the order, whether in part or in full, or refuse to accept the goods, Seller is entitled to payment of at least 30% of the order value unless Seller proves damages in excess of 30% of the order value.

3.3. Seller shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control.

4. Acceptance/Inspection.

4.1. Buyer shall inspect the Goods as soon as possible, but at least within seven days, after receipt of the Goods pursuant to the Incoterm rules stipulated in the purchase contract.

4.2. Buyer shall notify Seller by registered letter of any claims that the Goods do not conform to Seller's warranty for such Goods immediately, i.e. without delay after detection of such claims.

4.3. Unless the inspection is performed as stipulated in 4.1., Seller implies that the Goods are deemed to be accepted by the buyer.

5. Risk of Loss.

All risk of loss or damage to Goods shall pass to Buyer upon delivery thereof to Buyer, to its designated agent, or to a carrier for delivery to Buyer, whichever occurs first. Unless otherwise agreed in the purchase contract or by Seller in writing, all shipments shall be FOB or point of manufacture.

6. Prices/Taxes

6.1. Seller's prices are subject to change without notice. Unless otherwise specified, all quotations are binding for acceptance within twenty-four (24) hours of receipt of quotation.

6.2. Unless specified on the front page of this form, Seller's prices are exclusive of any value-added, sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any law, rule, or regulation, Federal, State or local, concerning the Goods sold hereunder or the manufacture or sale thereof. If Seller pays any such taxes or assessments, Buyer shall, upon demand, reimburse Seller for such amounts within two days. Seller's prices are also exclusive of any discount or other reductions.

6.3. Unless specified otherwise in the order confirmation, Seller's prices apply "ex works".

6.4. If Seller provides Buyer any labour in conjunction with the the delivery of the goods, buyer is charged based upon the numbers of hours. The hourly rate will be specified in the order confirmation or a separate written instrument.

7. Terms of Payment

7.1. Payments any new Goods have to be made in advance of delivery.

7.2. All other payments terms are subject to acceptance at Seller's office.

7.3. Unless specifically allowed in writing by Seller, no discounts shall be granted. The price for the Goods and all other amounts due to Seller from Buyer shall be paid without abatement, deduction, or setoff. The date of payment of an invoice shall be the date the payment is received by Seller at the location designated on the invoice.

7.4. Agents or other representatives are not authorized to accept payments. 7.2. Failure to pay or any late payment of an invoice will automatically and without prior notice increase the invoice amount by 10%, with a minimum amount of EUR 50 or the equivalent amount in US funds. In addition, default interest shall be payable at 15% per annum.

8. Retention of Title

Unless specified to the contrary in writing, Seller retains title of the Goods until full payment of the sales price, incidental expenses, taxes or any other payment agreed to between Seller and Buyer, has been received. In the event of Buyer's failure to pay, Seller may give Notice of Default to the Buyer, and, if Buyer does not comply within 8 days of such notice, Seller may rescind the sale contract by ordinary written notice and, under express reservation of claims for damages, take the Goods back.

9. Warranties and limitations on warranties.

The only express warranties made by the Seller are those contained in the written warranty(ies) in effect for the Goods at the time of sale and provided to the Buyer upon delivery of the Goods. The warranty(ies) is/are as follows:

9.1. THIS IS SELLER'S ONLY WARRANTY. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.

9.2. Seller warrants to the first user only ("First User") that the Goods manufactured by the Seller will be free from defects in materials and workmanship for twelve (12) months from the delivery of the Goods to the First User.

9.3. This Limited Warranty does not apply to and does not cover defects in materials and workmanship due to or in any way arising out of:

- Failure to properly maintain the Goods or any other improper maintenance of the Goods
- Abnormal use and service, including (without limitation) loading, unloading and/or transportation of non-uniformly distributed loads, use with corrosive cargo, and/or failure to adequately restrain or secure loads such that the Goods are subjected to strains or impacts greater than are imposed by normal use;
- Total weight of Goods and cargo exceeding the gross vehicle weight rating (GVWR) stated on the vehicle identification plate affixed to the Goods by Seller or the loading of each axle exceeding the gross axle weight rating (GAWR) listed on the vehicle identification plate;
- Accidents;
- Any other misuse or negligence;
- Tires;
- Except with respect to title, used goods sold by Seller, all of which are sold "as is";
- Except with respect to title, items or parts not manufactured by Seller; provided, that Seller will, as an accommodation to First User, pass on to First User any warranty it receives from the manufacturer of such items or parts, but only to the extent allowed by such manufacturer;
- Goods which have been repaired or altered by anyone other than an authorized repair facility approved by Seller, unless in Seller's sole and

exclusive judgment, such repairs are in no way responsible for the condition complained of;

- Parts which are not defective but which wear out under normal use, such as (but not limited to) light bulbs, electrical receptacles, paint and coatings, brakes, linings, drums and return springs, equalizers, torque rod and camshaft bushings, amshafts, slack adjusters, brake cylinder diaphragms, springs, slider pads, wheel bearings, oil and oil seals, rim clamps and studs, gaskets and sealers, and all types of floors and floor boards.

9.4. If Buyer notifies Seller in writing within the warranty period of a defect in any Goods or part thereof sold by Seller to Buyer, and if Seller determines, after appropriate tests and inspection by Seller, that such Goods or part thereof are not in conformity with the warranty given hereunder, Seller will repair or replace, at its sole option, FOB point of manufacture or repair facility designated by Seller, the defective Goods or part thereof, provided Buyer returns such Goods or part thereof to Seller's designated repair/replacement center, freight prepaid. No Goods or part thereof shall be returned without Seller's prior approval. This shall be Buyer's exclusive remedy for Seller's liability hereunder. Any claims not made within the warranty period are deemed waived by Buyer. In lieu of repairing or replacing the defective Goods or part thereof, Seller may, at its sole option, refund the purchase price therefore.

9.5. Seller's liability to First User, or anyone claiming through or on behalf of First User, with respect to any claim or loss arising out of the Goods or alleged to have resulted from an act or omission of Seller, whether negligent or otherwise, and whether in tort, contract, or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the Goods or part with respect to which such liability is claimed or, where appropriate and at the option of Seller, to repair or replacement of the Goods or part. In no event shall Seller be liable for any bodily injury, death, or property damage resulting from or in any way arising out of the Goods or their sale, use, or manufacture or for any cargo loss or loss of use. Seller is not responsible for any financial loss due to lack of use of the Goods or any expenses arising therefrom, including but not limited to lodging, fuel, towing, loss of revenue and other expenses or damages. **IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES.**

9.6. If Buyer or any third party repairs or modifies all or part of the Goods without the prior written consent of Seller, or if the Goods are not installed or used in compliance with Seller's directions, this warranty shall be void.

9.7. This Limited Warranty may not be changed except in writing by an authorized officer of Seller.

9.8. The provisions of this limited warranty shall be interpreted and governed under the laws of Belgium.

10. Indemnification.

10.1. If the Goods are manufactured in accordance with specifications or other directions provided by Buyer, Buyer shall indemnify, defend, and hold harmless Seller against all claims, losses, liabilities, and expenses (including attorneys' fees), which Seller may incur or become liable to pay with respect to such Goods, including (without limitation) product liability claims, claims relating to patent, trademark, copyright infringement, or unfair competition, claims of non-compliance with any Federal, State, or local law or regulation, and any other claim of any third party which relates to or in any way arises out of such specifications or other directions provided by Buyer.

10.2. Buyer shall indemnify, defend, and hold harmless Seller against all claims, losses, liabilities, and expenses (including attorneys' fees), which Seller may incur or become liable to pay which relate to or in any way arise out of Goods being subjected to, in whole or part: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Goods; or (v) any use or application other than or varying in any degree from that for which the goods were designed.

11. Termination.

Seller shall have the right to terminate a given order confirmation or to cease work hereunder, in whole or in part, at any time, if (i) Buyer is in default of or commits a breach of any of the provisions of these Terms and Conditions or any other agreement it has with Seller, (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer, (iii) Buyer executes an assignment for benefit or creditors, (iv) a receiver is appointed for Buyer or any substantial part of its assets, or (v) Seller has any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance of its ability to perform within ten days after written request therefore by Seller.

Seller's right to terminate under this section is not an exclusive remedy. Seller shall be entitled to all other rights and remedies it may either at law or in equity. No termination hereunder shall affect any accrued rights or obligations of either party as of the effective date of such termination.

12. Storage.

In absence of any agreed shipping dates, Seller shall have the right to invoice Buyer and ship the Goods once they are ready for shipment and notice Buyer accordingly. If Buyer is unwilling to accept shipment of the Goods on the agreed shipping date or in the absence thereof as provided in the prior sentence, Seller may, at its option, place the Goods in storage and bill Buyer for the storage charges. In such case, risk of loss shall pass to Buyer at the time the Goods are placed in storage, and the date the Goods are placed in storage shall constitute the date of shipment for purposes of beginning the warranty period.

13. Waiver.

Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right to require performance of that obligation or of any other obligation of Buyer hereunder. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy shall be considered to be a waiver of any default or acquiescence therein.

14. Miscellaneous.

Buyer shall not assign any of its rights or obligations hereunder without Seller's prior written consent. These Terms and Conditions shall be construed in accordance with the laws of Belgium without regard to any rules on conflicts of laws. The section headings contained herein are not part of these Terms and Conditions and are included solely for the convenience of the parties.

15. Choice of Law and Jurisdiction

Belgian law shall apply in respect of these standard terms and conditions and the entire legal relationship between Seller and Buyer. For all disputes arising out of the present agreement,

only the courts in the court district of LIEGE (BELGIUM) shall have jurisdiction. However, the seller shall be free to raise legal proceedings before any other court.