

Soft-Noze USA Inc - Terms & Conditions of Sale

1. Definitions

As used in these Terms and Conditions the following words have the following meanings:

Seller: Soft-Noze USA, Inc. ("SoftNoze"), its affiliates, successors and assigns.

Goods: Any and all goods, services and equipment offered for sale by the Seller.

Buyer: Any third party or parties who order or purchase Goods from the Seller.

2. Acceptance and Agreement

These Terms and Conditions of Sale apply to Goods supplied by Seller. Unless Seller has otherwise expressly agreed in writing, these Terms and Conditions constitute the entire agreement between Seller and Buyer concerning the subject matter hereof and supersede all other communications between the parties, whether written or oral. Any provision or condition of Buyer's order which is in any way different from or in addition to these Terms and Conditions (except additional provisions specifying quantity and shipping or billing instructions) shall not be applicable or binding upon Seller unless otherwise agreed in writing by an authorized representative of Seller. No addition to or modification or waiver of these Terms and Conditions shall be deemed to be accepted by Seller or to form part of any agreement between the parties unless made in writing by an authorized representative of Seller. These Terms and Conditions of Sale shall be deemed accepted by Buyer as to any Goods delivered to Buyer.

3. Ordering

All orders are subject to acceptance by Seller. Buyer may submit and Seller may accept orders via fax, phone, mail or E-mail. Seller shall provide an order confirmation to all orders submitted by Buyer. All orders may have a minimum invoice amount (net U.S. dollars) as established by Seller from time to time.

4. Changes

Buyer shall have the right at any time before completion of the order to make changes in quantities, delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in costs or in the time required for performance, Seller shall notify Buyer and an equitable adjustment shall be made.

5. Price

Prices for the Goods are described in the Seller's Price List Form. All prices are in U.S. Dollars. Prices and specifications are subject to change without notice. Seller's written quotations are valid for a period of thirty (30) days from the date the quotation is given unless otherwise noted. Verbal quotations expire at 5PM EST on the day the verbal quotation is given.

6. Taxes

Responsibility for all federal, state and local taxes imposed on the sale of any of the Goods shall be borne by Buyer, unless Seller is provided with a tax exemption (resale) certificate.

7. Payment Terms

Buyer shall make payment in full within net 30 days of the date of invoice without any deductions. Seller reserves the right to place a credit-hold on Buyer's orders and to assign C.O.D. terms for Buyer in the event that Buyer's accounts become past due.

8. Cancellation

Orders may not be cancelled except upon Seller's written approval, which shall be subject to the Buyer's payment of Seller's reasonable cancellation charges. Such charges may include all reasonable costs incurred by Seller in preparing to meet the Buyer's anticipated delivery schedule including, without limitation, commitments by Seller to its suppliers, and the cost of inventory (raw materials, work in process and finished goods) allocated to the Buyer's order together with a reasonable allowance for prorated expenses and anticipated profits.

9. Delivery Terms/Risk of Loss

Goods shall be delivered F.O.B. Seller's facility in Frankfort, New York, unless otherwise agreed in writing. All shipping and handling charges are the responsibility of Buyer and Buyer shall assume the risk of loss at the time Goods are delivered to Buyer F.O.B. Seller's facility.

10. Returns

All returns must be approved by Seller and assigned a SoftNoze return authorization number. All SoftNoze authorization numbers are valid for sixty (60) days from the date of issuance, after which time a new SoftNoze authorization number must be obtained by Buyer. All returned Goods must be accompanied by the original SoftNoze invoice or they will not be accepted by Seller. No returns will be accepted for Goods that are customized for Buyer, unless otherwise specifically noted by Seller on the original quotation or invoice. All returns are subject to inspection and acceptance by Seller. All returns must be in salable condition for Buyer to receive credit. Goods returned within ninety (90) days after the date of the original invoice are subject to a fifteen percent (15%) restocking fee. Seller reserves the right to refuse returns after such ninety (90) day period or to apply a twenty five percent (25%) restocking fee to such returns.

11. Force Majeure

Seller shall not be liable for any delays in delivery of orders, due in whole or in part, directly or indirectly, to fire, Act of God, strike, shortage of raw materials, supplies or components, retooling, upgrading of technology, delays of carriers, embargo, government order or directive, or any other circumstance beyond Seller's reasonable control.

12. Warranty

The products of Soft-Noze USA Inc (SoftNoze) are sold under the warranties set forth in the following paragraphs. Such warranties are extended only with respect to a purchase of these products, as new merchandise, directly from SoftNoze or from a SoftNoze distributor, representative or reseller, and are extended only to the first buyer thereof who purchases such products other than for the purpose of resale.

SoftNoze warrants, for a period of sixty (60) days following the date of delivery to Buyer, that SoftNoze products will be free of defects in materials and workmanship under normal use and service and will conform to applicable specifications published by SoftNoze. SoftNoze's sole obligation under this warranty shall be to repair or replace nonconforming products which Buyer shall report as defective during such sixty (60) day period and which upon investigation SoftNoze determines to be defective. Buyer shall bear all freight and related charges incurred in the return of parts to SoftNoze at its main office (Soft-Noze USA, Inc., 2216 Broad Street, Frankfort, New York 13340-5100). All returned parts must be approved by SoftNoze and assigned a Return Goods Authorization (RGA) number. If returned parts are found to be defective SoftNoze shall bear all freight and related charges incurred in the return of repaired or replacement parts. If returned parts do not prove to be defective, Buyer shall bear all freight and related charges for the return as well as costs involved with SoftNoze's examination of the parts.

The above warranties shall not apply to any products or parts thereof in the event of damage, defects or malfunctions resulting from misuse, accident, and neglect or tampering.

SoftNoze shall not in any event be liable for any indirect, special, incidental or consequential damages of any kind in connection with or arising out of the sale of its products.

THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. SOFTNOZE DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SOFTNOZE OR ITS EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL CREATE A WARRANTY OR MAKE ANY MODIFICATION, EXTENSION OR ADDITION TO THE EXPRESS WARRANTIES ABOVE.

13. Indemnification

Buyer shall indemnify and hold harmless Seller from losses, claims, damages expenses or liabilities of any kind (including attorney's fees and court costs) resulting from or arising out of (i) Buyer's use of any Goods in combination with other products, equipment, devices or software not supplied by Seller [(including without limitation any application software produced by Buyer for use with such Goods)], or (ii) the alteration, modification or customization of any Goods by any person other than Seller, or by Seller based on Buyer's specifications or otherwise at Buyer's direction. In the event of an action or claim against Seller which is based on any conduct described in the preceding sentence, Buyer shall at its own expense defend such action or claim, and Buyer shall pay any and all damages and costs finally awarded against Seller in connection with such action or claim, provided that Seller notifies Buyer promptly in writing of such action or claim, Seller gives Buyer sole

control of the defense thereof (and any negotiations for settlement or compromise thereof), and Seller cooperates in the defense thereof at Buyer's expense.

14. Ownership of Proprietary Materials and Designs

Buyer acknowledges that the products contain proprietary technical information and designs of Seller or its licensor (collectively "Proprietary Materials") and that (as between Buyer and Seller) ownership of all patents, copyrights, trademarks, trade names and other intellectual property rights relating to or residing in the Products and the Proprietary Materials shall remain with Seller or its licensor. Buyer understands and agrees that, except as Seller may otherwise expressly agree, Seller's sale of Products does not constitute a sale of any Proprietary Materials or any such intellectual property rights, except that Buyer and its customers shall have the limited right to use Proprietary Materials in the course of using the Products. Buyer shall promptly notify Seller of any actual or threatened misappropriation or infringement of Seller's proprietary rights which comes to Buyer's attention.

15. Waivers

Failure by Seller to insist upon performance of any of these Terms and Conditions of Sale shall not be constituted as a waiver of such Terms and Conditions and shall not effect the right of the Seller thereafter to enforce each and every Term and Condition.

16. Assignment

Buyer shall not assign any of its rights or obligations under any agreement or purchase order with Seller, without the express written consent of Seller.

17. Choice of Law

The interpretation and performance of all transactions shall be governed, controlled, interpreted and enforced in accordance with the laws of the State of New York (without reference to its conflicts laws). Any disputes, actions at law, suits in equity or judicial proceedings of any kind shall be litigated only in the state and federal courts located in the City of Utica, New York.

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Revision 5/08