

FIBER SHIELD INDUSTRIES, INC.

CONDITIONS OF SALE

1. **Exclusive Terms.** Notwithstanding any terms included in any purchase order or confirming memorandum of Buyer, these Conditions of Sale, together with any mutually agreed terms on the front side hereof (collectively "this Agreement") shall be the sole and exclusive terms relating to the sale of the goods described on the front hereof. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed an acceptance thereof or waiver of any provision of this Agreement.
2. **Prices.** Prices are stated in United States dollars and do not include any federal, state or local taxes or other governmental fees, assessments or charges on the articles. Wherever applicable, the taxes or other fees, assessments or charges will be for the account of Buyer and may be added to the invoice as a separate charge to be paid by Buyer. Omission of any taxes or fees does not limit Buyer's obligation for payment of same.
3. **Payment.** The purchase price for the goods sold hereunder shall be payable in lawful money of the United States of America, or by check drawn upon and duly certified by a bank satisfactory to Seller. For Buyers who have established satisfactory credit with Seller, payment terms for all orders, including taxes and shipping charges shall be Net 30 days from the date of shipment of conforming goods by Seller. All past due balances are subject to a late charge of one and one-half per cent (1 1/2 %) per month, or the maximum amount permitted by law, whichever is less. Returned checks shall be subject to an additional charge of \$25.00 plus the amount of charges to Seller by its financial institution. Seller reserves the right to refuse to accept orders for goods or to withhold delivery on accepted orders (or any unshipped portion thereof) in the event that Buyer is delinquent in any payment or obligation owed by Buyer to Seller, whether or not arising out of this Agreement, or in the event Seller, in its sole judgment, determines that Buyer's credit is impaired.
4. **Risk of Loss; Delivery.** Delivery terms shall be strictly FOB Seller's place. All risk of loss or damage to the goods sold will be borne by Buyer upon delivery by Seller to a common carrier. Cost of transportation from Seller's plant will be borne by Buyer. Seller reserves the right to select the means of shipment and carrier, if any, unless specific shipping instructions are received from Buyer. Seller shall not be required to insure any shipment unless it has received instructions from Buyer and Buyer makes payment or satisfactory arrangements to pay all charges for procuring such insurance.
5. **Force Majeure.** Seller shall not be liable for delays in delivery or non-delivery of all or part of the goods, resulting from any cause beyond its control, including without limitation, act of God, fire, flood, strike, lockout, factory shutdown or alteration, act of civil or military authority, insurrection, riot, war, transportation shortage or delay, weather, accident, operations of law or governmental regulations, or delay in obtaining or inability to obtain labor or material. Delivery dates will be extended to the extent of delays resulting from the circumstances described above, and no delivery shall be deemed overdue regardless of cause if delivery is made within 90 days from the estimated delivery date.
6. **Limitation of Liability.** Seller's liability for failure to deliver the goods, or for delivery of non-conforming goods, regardless of cause, will be limited to the repayment to Buyer of such part of the purchase price as Buyer may have paid to Seller for the undelivered or non-conforming goods. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER HAS BEEN MADE AWARE OF THE POSSIBILITY THEREOF, WHICH MAY BE INCURRED BY BUYER AS A RESULT OF A BREACH OF THIS AGREEMENT BY SELLER OR ANY OTHER CAUSE OF ACTION, REGARDLESS OF FORM, WHICH BUYER MAY HAVE AGAINST SELLER ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, OR THE BUYER'S USE OF PRODUCTS SOLD HEREUNDER, INCLUDING LOSS OF USE, LOSS OF PROFITS, OR DAMAGE TO PERSONAL PROPERTY. SELLER'S TOTAL LIABILITY FOR ANY CLAIM OR CAUSE OF ACTION WHETHER BASED IN CONTRACT, TORT, WARRANTY OR STRICT LIABILITY, AND REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE SUM OF \$2,500.
7. **Indemnification by Buyer.** Buyer shall be solely responsible for and shall indemnify Seller for all loss, costs or damage, including attorney's fees arising from Buyer's failure to strictly comply with all requirements of these Terms and Conditions of Sale or to comply with instructions given by Seller with respect to the use, labeling, storage or handling of the goods, particularly as they relate to safety or environmental concerns, or Buyer's failure to comply with any requirements imposed by law. If this sale is of bulk goods and Buyer is repackaging and/or reformulating the goods for resale, then Buyer assumes all responsibility for and shall indemnify Seller for all loss, costs or damages, including attorney's fees arising from or relating in any way to the repackaging, re-labeling, reformulation, the types, sources and quality of any additives or propellants, failure to give adequate safety and/or environmental warnings, or any other claim which would not have occurred but for the actions of Buyer.
8. **Warranty.** Seller's sole warranty as to the products sold herein is that they will conform to the specifications for the goods when delivered. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NO WARRANTY, WHETHER OF MERCHANTABILITY, FITNESS FOR PURPOSE OR OTHERWISE, EXPRESS OR IMPLIED IN FACT OR BY LAW, IS GIVEN BY SELLER WITH RESPECT TO ANY OF THE GOODS SOLD HEREUNDER, WHETHER FOR BREACH OF ANY WARRANTY, NEGLIGENCE OF MANUFACTURE OR OTHERWISE. BUYER'S SOLE REMEDY FOR A BREACH OF THE FOREGOING WARRANTY SHALL BE, AT SELLER'S SOLE AND EXCLUSIVE DISCRETION, TO REPLACE THE NON-CONFORMING GOODS WITH CONFORMING GOODS, OR TO ACCEPT THE RETURN OF THE NON-CONFORMING GOODS AND REFUND SUCH PORTION OF THE PURCHASE PRICE AS MAY HAVE BEEN PAID BY BUYER, OR ISSUE A CREDIT AGAINST BUYER'S OUTSTANDING BALANCE DUE TO SELLER. This warranty shall be void and of no force or effect in the event that the defect or non-conformity in the goods is caused by the improper use, storage, handling or application of the goods after delivery by the Seller to the common carrier or any other matter for which Buyer has assumed responsibility as provided in these Conditions of Sale. Further, this warranty shall be void and of no force or effect in the event that Buyer shall not have preserved for Seller's inspection and test the unused portion of any allegedly defective goods or any materials treated by the allegedly defective goods.
9. **Warranties Offered by Buyer.** Buyer shall be free to offer its own warranty to its customers on such terms as it may deem appropriate, provided however, that Buyer shall indemnify and hold Seller harmless from any and all loss, cost or damage, including attorney's fees, arising from the offering of any such warranty. Buyer shall in no way be considered the agent or representative of Seller for any purpose and shall not be authorized to make any representation or warranty to any third party regarding the goods, unless contained in written materials supplied by Seller for dissemination to customers or otherwise specifically authorized in writing by Seller.
10. **Use of Products; Medical or Internal Use.** Buyer shall be solely responsible for determining whether the product(s) are suitable for Buyer's intended use. Buyer warrants and represents that it will not use nor knowingly allow to be used, the Products delivered or provided hereunder in the design, production, sale or distribution of materials for use in medical and/or dental devices which are implanted in the human body or which come into contact with internal body fluids or tissues, unless Seller is advised in advance of such use or intended use, and any special terms and conditions required by Seller, including policies of liability insurance to be paid for by Buyer naming Seller as an insured, have been agreed to or complied with. Buyer shall immediately notify Seller of Buyer's or Buyer's customer's intention to use the Products for purposes as described in the preceding sentence, and shall not ship or commit to ship Products until all of Seller's conditions have been complied with, provided that nothing herein shall require Seller to sell Products for Buyer's intended use or to continue to ship pursuant to accepted orders after it learns of such use or intended use and, further provided, that no failure on the part of Seller to object to Buyer's intended use shall constitute approval or acceptance by Seller of such use.
11. **Governing Law; Jurisdiction.** This Agreement will be governed by the laws of the state of New York, including the Uniform Commercial Code as adopted in the State of New York as effective and in force on the date of Buyer's order, except for its Conflict of Laws rules. Exclusive jurisdiction and venue for the resolution of any and all claims and disputes arising out of this transaction shall be in the state and federal courts situated in Suffolk County, New York, and the parties hereto hereby consent to personal jurisdiction in Suffolk County, New York.
12. **Enforceability.** In the event any provision of this Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without affecting the remainder of such provision or the remaining provisions of this agreement which shall continue in full force and effect.
13. **Amendments and Modifications.** No amendment or modification of this Agreement shall be valid or binding unless the same shall be made in writing and signed by authorized representatives of each party hereto.
14. **Notices.** Any notice required or permitted pursuant to this Agreement shall be effective three days after delivery of same to an authorized representative of the U.S. Postal Service by pre-paid certified mail, return receipt requested.
15. **Waiver.** No failure on the part of Seller to enforce against Buyer any term or condition, or to exercise any right or privilege, under this Agreement shall constitute a waiver of Seller's right to enforce any future breach by Buyer of any such term or condition or to exercise any such right or privilege in the future. In order to be effective, a waiver must be in writing and signed by an authorized representative of Seller.
16. **Attorney's Fees.** In any action brought by Seller against Buyer arising out of this Agreement or the performance thereof, if Seller shall prevail in such action, Seller shall be entitled, in addition to its other rights and remedies, to recover its reasonable attorney's fees, costs and expenses of suit.
17. **Limitation of Actions.** No suit or other action by Buyer against Seller in any way arising out of this Agreement or Seller's performance hereunder shall be commenced more than 18 months after the cause of action upon which such suit or action is based arose.