

Grammer Inc.

Terms and Conditions of Sale



1. **GENERAL** These general terms and conditions of sale (along with any associated written specification, quotation and/or supplemental terms and conditions provided by Grammer Inc. hereinafter referred to as Seller) will exclusively govern the sale by Seller of all goods and services (including without limitation products and repair parts, hereinafter, "Products") furnished to Buyer hereunder, whether such sale is effected by paper-based transactions or via facsimile or other forms of electronic data interchange ("EDI") or electronic commerce. Buyer's receipt or acceptance of delivery of any of the Products ordered or purchased hereunder will constitute its acceptance of these terms and conditions. No addition or modification to these terms and conditions will be binding on Seller unless agreed to in writing signed by an authorized representative of Seller. Seller objects to and rejects other terms and conditions that may be proposed by Buyer or that appear on or are referenced in Buyer's purchase order or requisition that are in addition to or otherwise not consistent with the terms and conditions set forth or referenced herein. If we provide the Customer with drawings, cost estimates and other documents in respect to the quotation we shall be entitled to retain ownership of and copyright to all of these items. These shall not be made available to third parties without our consent.
2. **QUOTATIONS AND PUBLISHED PRICES** Quotations automatically expire forty-five (45) calendar days from the date issued unless otherwise stated in the quotation and are subject to withdrawal by notice within that period. Seller reserves the right to unilaterally extend such quotation up to 6 months from the date of issuance. Prices shown on published price lists and other published literature issued by the Seller are not unconditional offers to sell, and are subject to change without notice. Prices shall be subject to adjustment to those in effect at time of shipment unless otherwise stated in the quotation. Unless otherwise specified in writing by Seller, all prices are exclusive of taxes, transportation and insurance, which are to be borne by Buyer.
3. **PAYMENT TERMS** Net thirty (30) days from date of invoice with ongoing approved credit as determined by Seller. Seller reserves the right to render invoices electronically and to receive payment by way of electronic funds transfer. Seller reserves the right to suspend any further performance hereunder or otherwise in the event payment is not made when due. No payment by offset is permitted. Interest charges will be added to overdue invoices at the rate of 1.5% per month (subject to any limit imposed by applicable law).
4. **DELIVERY TERMS** Delivery terms are FCA Seller's plant or warehouse (per current Incoterms) or as otherwise agreed to as evidenced by Seller's order acknowledgment. In all cases title transfers to Buyer upon the earlier of Seller's delivery to Buyer or receipt by the first carrier for transport to Buyer, except that title to all intellectual property rights associated with the Products remains with Seller or its suppliers and licensors. Acknowledged shipping dates are approximate only and based on prompt receipt of all necessary information from Buyer. Seller disclaims all liability for late delivery. Where applicable, prepaid shipping will be billed as a separate invoice item.
5. **WARRANTY**
 - a. **Products** Seller warrants that Products manufactured by Seller and supplied hereunder shall be free from material defects in workmanship and materials (excluding wear and tear) for a period equal to the lesser of 15 months from the date of shipment or 12 months from the date of installation. Seller's liability under this warranty is limited to return of any nonconforming Product to Seller, within the warranty period and with all freight costs prepaid, for, at Seller's option, repair or replacement of items proven to be defective. Products which are not manufactured by Seller are subject to the original manufacturer's warranty.
 - b. **Returns** Buyer shall obtain Seller's prior approval for any Product returns and permit Seller to inspect any Product which Buyer claims is nonconforming.
 - c. **Patents** Buyer shall give Seller prompt written notice of any patent infringement suit or claim, Seller shall control the defense or settlement of same, and Buyer shall cooperate in such defense. Seller's liability under this warranty is limited to such defense, and, if sale or use of any Product is enjoined, refund of the price paid by Buyer for such Product (less a reasonable charge for use, damage and obsolescence). Seller makes no warranty against patent infringement arising out of use of the Product in a manner not recommended or approved by Seller, whether alone or in combination with other materials; any product resulting from use of the Product; any Product manufactured for Buyer according to Buyer's specifications; or any Product (including components and ingredients) manufactured by other than Seller.
 - d. **Disclaimer and Limitation of Liability** To the fullest extent permitted by applicable law, Seller shall not be liable for any incidental, consequential, indirect or special damages, including, but not limited to, lost profits and lost production, whether arising under breach of representation or warranty (whether express or implied) or contract, negligence, strict liability or other tort, indemnity, duty at common law or any other theory of liability arising out of or in connection with any act or omission of Seller relating to the manufacture or supply of the Products, their resale by Buyer or their use by any customer. In any event, Seller's liability for any and all claims, damages and causes of action arising out of the sale, use, storage, delivery or non-delivery of any Product or equipment, performance of any services or any warranty shall be limited to the price (including freight charges if paid by Buyer) paid to Seller for such Product or equipment.
 - e. THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR PERFORMANCE OR APPLICATION WARRANTIES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
6. **CHANGES** Buyer may with the express written consent of the Seller make changes in the specifications for equipment or work covered by the contract. In such event the contract price and delivery dates may be adjusted. The Seller shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

7. **CANCELLATION** Undelivered parts of any order may be cancelled by the Buyer only with the written approval of the Seller. If the Buyer makes an assignment for the benefit of creditors, or in the event that the Seller for any reason feels insecure about the Buyer's willingness or ability to perform, then Seller shall have the unconditional right to cancel this sales transaction. In the event of any cancellation of this order by either party, the Buyer shall pay to the Seller the reasonable costs and expenses (including engineering expenses and all commitments to its suppliers and subcontractors) incurred by the Seller prior to receipt of notice of such cancellations plus the Seller's usual rate of profit for similar work.
8. **INTERPRETATION** Should any term or provision contained in the contract contravene or be invalid under applicable law, the contract shall not fail by reason thereof but shall be construed in the same manner as if such term or provision had not appeared therein. All transactions covered by these terms and conditions shall be governed by the laws of the State of Wisconsin.
9. **PLACE OF PERFORMANCE, JURISDICTION, APPLICABLE LAW**
 - f. The place of performance is our company's seat in Hudson, Wisconsin.
 - g. The courts of the State of Wisconsin shall have jurisdiction, if the Customer is a merchant within the meaning of the United States Commercial Code or a public legal entity. However, we shall be entitled to file proceedings against the Customer in his general jurisdiction.
 - h. The law of the State of Wisconsin shall be applicable in addition to the provisions of the contract. Applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.
10. **LIABILITY FOR INFRINGEMENTS OF PROPERTY RIGHTS** If the Customer prescribes to us how to manufacture the goods to be delivered by providing us with specific details, documents and drawings, he shall be responsible for ensuring that by fulfilling our contractual obligations we do not infringe third parties' rights, such as patents, utility models as well as other property and copyrights. The Customer undertakes to hold us harmless and indemnify us for all claims third parties may assert in relation to such infringements
11. **FORCE MAJEURE** Seller will not be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God, acts or omissions of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, or transportation embargoes. In the event of such delay, Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the delay.
12. **DISPUTES** The parties will attempt in good faith promptly to resolve any dispute arising hereunder by negotiations between representatives of the parties who have authority to settle the dispute. If unsuccessful, the parties further will attempt in good faith to settle the dispute by non-binding third-party mediation, with mediator fees and expenses apportioned equally to each side. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms hereof. These procedures are the exclusive procedures for the resolution of all such disputes between the parties.
13. **ENTIRE AGREEMENT** This Agreement sets forth the entire understanding of Seller and Buyer with respect to the subject matter of this Agreement and supersedes all prior agreements, communications or negotiations between the parties with respect to such subject matter. Except as specifically provided in this Agreement, this Agreement shall not be amended or modified except by a writing executed by both parties.