

## **BESTAR LLC - CONDITIONS OF SALE**

All orders agreed to by BESTAR LLC (hereafter "BESTAR") and Purchaser are subject to these terms provided by BESTAR, and Purchaser agrees to be bound hereby. No modifications or additions thereto shall be binding upon BESTAR or any affiliate, parent company or subsidiary, unless expressly stated in the order or otherwise consented to in writing by BESTAR.

1. Prices are subject to increases without prior notice if caused by circumstances between the order and delivery beyond BESTAR's control or due to unforeseen circumstances (including, but not limited to, increases due to changed market conditions, customs duties or similar costs). Increased prices prevailing at time of shipment will apply, as determined by BESTAR in its reasonable discretion.
2. BESTAR will make every effort to ship exact quantities but reserves the right to over-ship or under-ship by up to 10 (ten) % and charge Purchaser for the amounts actually shipped which shall not give rise to any warranty or other claim by Purchaser.
3. Delivery of goods to common carrier or licensed trucker shall constitute delivery to Purchaser, and all risk of loss or damage in transit shall be borne by Purchaser. If there exists any evidence of damage to materials or packaging material, or of loss, claim should be made against the carrier without delay.
4. BESTAR reserves the right to make delivery in installments. All such installments may be separately invoiced and shall be paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept remaining deliveries.
5. If applicable, BESTAR reserves the right at any time to revoke any credit extended due to Purchaser's failure to pay for any goods when due or for any other reason reasonably deemed good and sufficient by BESTAR.
6. BESTAR reserves a purchase money security interest in goods sold hereunder equal to the price and ancillary costs including any interest. Said interest shall be released on receipt of payment in full. Upon request, Purchaser agrees to sign and give UCC forms to BESTAR for filing. Purchaser's refusal to deliver a duly signed UCC form authorizes BESTAR to sign and record such document as attorney-in-fact for Purchaser to perfect said security interest of BESTAR.
7.
  - a) Orders shall not be cancelable by the Purchaser for delays in delivery or other cause until 10 (ten) days after written notice of such intention has been received by BESTAR, and Purchaser shall be obligated to accept any portions of the goods shipped or delivered by BESTAR during such period. In the event of Purchaser's cancellation of the order without fault on the part of BESTAR, Purchaser agrees to pay a cancellation charge of up to 25 (twenty-five) % or the actual costs incurred by BESTAR, whichever is greater.
  - b) Orders for custom-made material may not be cancelled after BESTAR has begun production including procurement of materials unless BESTAR agrees otherwise in writing.
8. **INSPECTION OF GOODS, LIMITED WARRANTY:**
  - a) Purchaser shall be obligated to inspect the goods within 2 (two) weeks after receipt. Any deficiencies as to the applicable purchase specifications, whether detected during the inspection period or later, shall be reported to BESTAR within 10 (ten) days of the discovery. Any deficiencies that should have been detected during the inspection period upon delivery shall be deemed waived if not reported to BESTAR within 10 (ten) after the expiration of the inspection period.
  - b) BESTAR warrants for a period of 12 (twelve) months after shipment that all goods manufactured and delivered by BESTAR will conform to the agreed upon purchase specifications. Should any failure to conform to this warranty appear, Purchaser must make a claim in writing to BESTAR within the applicable period stated in Section 8a. above. In the absence of a timely claim, any defect or non-conformity shall be deemed waived by Purchaser.
  - c) BESTAR, upon timely notification and substantiation that the goods have been stored and maintained in accordance with BESTAR's recommendations and standard industry practice, will correct non-conformities either by repairing any defect or, in its sole discretion, by supplying replacement goods F.O.B.
  - d) THE FORGOING WARRANTY IS EXCLUSIVE AND SHALL BE IN LIEU OF ALL OTHER WARRANTIES OF QUALITY WHETHER WRITTEN, ORAL, OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.
9. **LIMITATION OF LIABILITY:** IN ALL NON-WARRANTY CASES, EXCEPT AS MAY BE OTHERWISE REQUIRED BY APPLICABLE LAW, BESTAR LIMITS ALL CLAIMS OF ALL PERSONS FOR LOSSES OR DAMAGES TO THE FULLEST EXTENT PERMITTED BY LAW, SUFFERED BY ANY OF THE FOREGOING, TO THE VALUE OF THE ORDER, AND NO DAMAGES SUCH AS FOR LOST PROFIT, LOSS OF PRODUCTION, PROPERTY DAMAGE, SPECIAL DAMAGES, CLAIMS OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, EXEMPLARY OR PUNITIVE DAMAGES CLAIMED BY OR THROUGH SUCH INJURED PARTY ASSERTING SUCH CLAIMS ARE COMPENSABLE FOR BY BESTAR.

10. Applicable Law, Disputes, Waiver of Jury Trial:

- a) The order including these terms shall be governed and construed in accordance with the laws of the State of Georgia without giving effect to its conflict of law provisions. In the event of a dispute, neither party shall be entitled to claim consequential or incidental damages such as lost profits, special damages, exemplary or punitive damages.
- b) The parties agree to submit disputes to an arbitrator in Atlanta, Georgia applying the American Arbitration Association Rules. The proceedings shall be in English and enforceable in any court of competent jurisdiction according to applicable law and the United Nations Convention for the Enforcement and Recognition of Arbitral Awards unless the nature of the dispute is suitable to injunctive relief thereby affording a party the right to pursue redress in court without proceeding to arbitration.
- c) If a matter cannot be arbitrated, the parties submit to personal and subject matter jurisdiction of the courts of Atlanta, Georgia. In the event of any court proceedings in the United States, the parties waive their right to a trial by jury.

11. Blanket Orders: Any deviation from the following provisions concerning "Blanket Orders" must be included in the applicable order or shall require BESTAR's prior written consent. Blanket Orders placed with BESTAR are binding for a period of no more than 12 (twelve) months from the date of BESTAR's initial receipt of the goods under the applicable Blanket Order. Blanket Orders must include a shipping/release schedule, and the initial shipment to Purchaser will commence immediately following arrival of the goods at BESTAR's warehouse. Should Purchaser not have received delivery of the full quantity detailed in the Blanket Order by the end of the applicable time period, BESTAR reserves the right to deliver the remaining goods upon written notice to Purchaser and to charge Purchaser for the remaining goods so delivered at the prices agreed to in the Blanket Order.

12. Terms of payment are stated on each individual invoice issued. BESTAR will accept payments by check, cash and wire transfers to any of BESTAR's bank accounts. Purchaser agrees to make all payments promptly when due. Purchaser further agrees to pay a 1.5 (one and one half) % per month service charge on all unpaid invoices past due 30 (thirty) days together with all costs incidental to collection including reasonable attorney's fees.

13. BESTAR shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, embargoes, fire, floods, inability to obtain materials, labor or services, conditions arising from government orders or regulations, war or national emergency, Acts of God, and any other cause, similar events to the foregoing which are deemed beyond BESTAR's reasonable control. Purchaser may not refuse delivery on grounds of an event of Force Majeure. If a Force Majeure event occurs, BESTAR may terminate any outstanding deliveries by giving notice to the Purchaser and BESTAR shall have no liability whatsoever to the Purchaser in connection with any such deliveries not made.

14. Sole Terms: As stated above, acceptance of all orders from Purchaser is deemed to include Purchaser's acceptance of these terms, unless otherwise accepted by BESTAR in writing. In addition, the parties agree that Purchaser's acceptance of any goods supplied by or on behalf of BESTAR shall, without limitation, constitute acceptance of these terms. If Purchaser retains possession of the goods for a period of ten (10) days or longer after their receipt or makes use of the goods at any time after their receipt, Purchaser shall be deemed to have expressly consented to BESTAR's terms without condition or qualification, and Purchaser shall be deemed having expressly waived any conditions or qualifications regarding Purchaser's acceptance of BESTAR's offer.

15. The forgoing terms, together with the order, represent and constitute the entire agreement between the parties. Any provisions which are found to be unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. BESTAR's failure at any time to require strict performance of any of the provisions hereof shall not waive or diminish its right to thereafter demand strict compliance with these terms.

issued: 1. July 2001  
last updated: 1. January 2019