



Terms and Conditions of Sale

The items described in this document are hereby offered for sale at prices to be established by Catalina Cylinders, its subsidiaries and its authorized distributors. This offer and its acceptance by any customer ("Buyer") shall be governed by all of the following Terms and Conditions. Buyer's purchase order communicated to Catalina Cylinders, its subsidiary or an authorized distributor ("Seller") verbally or in writing, shall constitute acceptance of this offer.

1. Terms and Conditions of Sale: All descriptions, quotations, proposals, offers, acknowledgments, acceptances and sales of Seller's products are subject to and shall be governed exclusively by the terms and conditions stated herein. Buyer's acceptance of any offer to sell is limited to these terms and conditions. Any terms or conditions in addition to, or inconsistent with those stated herein, proposed by Buyer in any acceptance of an offer by Seller, are hereby objected to. No such additional, different or inconsistent terms and conditions shall become part of the contract between Buyer and Seller unless expressly accepted in writing by Seller. Seller's acceptance of any offer to purchase by Buyer is expressly conditional upon Buyer's assent to all the terms and conditions stated herein, including any terms in addition to, or inconsistent with those contained in Buyer's offer. Acceptance of Seller's products shall in all events constitute such assent.

2. Prices & Payment: Prices quoted herein are based on Seller's current cost of material and labor, and if any changes occur in such cost at any time before shipment, prices may be adjusted by Seller proportionately to such changes in cost. If such adjustments are not mutually satisfactory, either party may cancel on the terms set forth in the paragraph concerning cancellation. Any claims by Buyer for omissions or shortages in a shipment shall be waived unless Seller receives notice thereof within 30 days after Buyer's receipt of the shipment.

3. Delivery: Unless otherwise provided by Seller, delivery shall be made Ex-Works Seller's plant. Regardless of the method of delivery, however, risk of loss shall pass to buyer upon Seller's delivery to a carrier. Any delivery dates provided are approximate only and Seller shall have no liability for any delays in delivery. All claims regarding shortages must be made within ten days from receipt of shipment, must be accompanied by the packing list(s) covering shipment, and noted on shipment Bill of Lading where applicable.

4. Warranty: Seller warrants that the items sold hereunder shall be free from defects in material or workmanship. See Catalina Cylinders Lifetime Warranty and Replacement Policy for further details. **THIS WARRANTY COMPRISES THE SOLE AND ENTIRE WARRANTY PERTAINING TO ITEMS PROVIDED HEREUNDER. SELLER MAKES NO OTHER WARRANTY, GUARANTEE, OR REPRESENTATION OF ANY KIND WHATSOEVER. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR PURPOSE, WHEATHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, TRADE USAGE, OR COURSE OF DEALING ARE HEREBY DISCLAIMED. NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED WHOLLY OR PARTIALLY, TO BUYER'S DESIGN OR SPECIFICATIONS.**

5. Limitation of Remedy: SELLER'S LIABILITY ARISING FROM OR IN ANY WAY CONNECTED WITH THE ITEMS SOLD OR THIS CONTRACT SHALL BE LIMITED EXCLUSIVELY TO REPAIR OR REPLACEMENT OF THE ITEMS SOLD OR REFUND OF THE PURCHASE PRICE PAID BY BUYER, AT SELLER'S SOLE OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ITEMS SOLD HEREUNDER, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY.

6. Changes, Reschedules and Cancellations: Purchase orders once placed can be cancelled only with Seller's written consent and upon terms which will save Seller from loss, including a reasonable allowance for loss of profits. No products may be returned for credit or adjustment without written permission from Seller. Buyer may request to modify the designs or specifications for the items sold hereunder as well as the quantities and delivery dates thereof, or may request to cancel all or part of this order, however, no such requested modification or cancellation shall become part of the contract between Buyer and Seller unless accepted by Seller in a written amendment to this Agreement. Acceptance of any such requested

modification or cancellation shall be at Seller's discretion, and shall be upon such terms and conditions as Seller may require.

7. Special Tooling: A tooling charge may be imposed for any special tooling, including without limitation, dies, fixtures, molds and patterns, acquired to manufacture items sold pursuant to this contract. Such special tooling shall be and remain Seller's property notwithstanding payment of any charges therefore by Buyer. In no event will Buyer acquire any interest in apparatus belonging to Seller which is utilized in the manufacture of the items sold hereunder, even if such apparatus has been specially converted or adapted for such manufacture and notwithstanding any charges paid by Buyer. Unless otherwise agreed, Seller shall have the right to alter, discard or otherwise dispose of any special tooling or other property in its sole discretion at any time.

8. Buyer's Property: Any designs, tools, patterns, materials, drawings, confidential information or equipment furnished by Buyer or any other items which become Buyer's property, may be considered obsolete and may be destroyed by Seller after two (2) consecutive years have elapsed without Buyer placing an order for the items which are manufactured using such property. Seller shall not be responsible for any loss or damage to such property while it is in Seller's possession or control.

9. Taxes: Unless otherwise indicated on the face hereof, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, sale or delivery of the items sold hereunder. If any such taxes must be paid by Seller or if Seller is liable for the collection of such tax, the amount thereof shall be in addition to the amounts for the items sold. Buyer agrees to pay such taxes or to reimburse Seller therefore upon receipt of its invoice. If Buyer claims exemption from any sales, use or other tax imposed by any taxing authority, Buyer shall save Seller harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the items are held to be taxable.

10. Indemnity for Infringement of Intellectual Property Rights: Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as provided in this Part 10. Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to items delivered hereunder for which the designs are specified in whole or part by Buyer, or infringements resulting from the modification, combination or use in a system of any item sold hereunder. If a claim is based on information provided by Buyer or if the design for an item delivered hereunder is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right. The foregoing provisions of this Part 10 shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property Rights.

11. Delays: The delivery dates are approximate and subject to confirmation. Seller shall not be responsible for reasonable or excusable delays, nor shall the Buyer refuse to accept deliveries because of any such delays. "Excusable delays" may include but are not limited to delays resulting from accidents, strike, fire, governmental controls, inability to obtain materials from causes beyond Seller's control. "Reasonable delays" include, without limitation, delays to which the Buyer, when notified, makes no objection.

12. Entire Agreement/Governing Law: The terms and conditions set forth herein, together with any amendments, modifications and any different terms or conditions expressly accepted by Seller in writing, shall constitute the entire Agreement concerning the items sold, and there are no oral or other representations or agreements which pertain thereto. This agreement shall be governed in all respects by the law of the state of the applicable Catalina Cylinders facility. No actions arising out of the sale of the items sold hereunder or this Agreement may be brought by either party more than two (2) years after the cause of action accrues. (Rev. 2016)