

Diamond USA Terms and Conditions of Purchase

1. **General**

These Terms and Conditions of Purchase (Contract) between Diamond USA (Buyer) and Supplier (Seller) shall be deemed binding at the time the order for the Goods is accepted and confirmed by Seller. Deviating terms of the Seller shall not apply without Buyer's consent and shall be binding to the extent only as they are not in contradiction to these Terms and Conditions of Purchase. Any conditions stipulated by the Seller, which are in contradiction to these Terms and Conditions shall only be valid if accepted by the Buyer in writing.
2. **Orders**

Orders are placed through an authorized Diamond USA Purchasing Agent by phone, facsimile, or e-mail, identified by a Diamond USA Purchase Order Number. Written order confirmations from Seller must be in Buyer's possession not later than 3 days after the order was initially placed with seller.
3. **Delivery Dates**
 - (a) The agreed upon and confirmed delivery dates are binding.
 - (b) If the Seller defaults with regard to a delivery date, Diamond USA reserves the right to refuse the delivery and/or the cancellation of the Contract at the Seller's expense. Buyer will immediately notify Seller in writing in case of any refusal of delivery or cancellation of Contract.
 - (c) Unless otherwise informed by Diamond USA in writing, the Seller remains bound to perform even after expiration of the agreed upon delivery dates. The Seller shall immediately notify Buyer in writing of any foreseeable delays in delivery.
 - (d) Based on changing market needs and product requirements, Buyer reserves the right to change any agreed upon delivery dates by informing Seller in writing.
4. **Delivery, Risk of Loss and Shipment.**
 - (a) Delivery and performance dates specified herein or otherwise communicated by Buyer to Seller are binding. Any deviations must be communicated to Buyer immediately in writing.
 - (b) Partial shipments require prior approval of Buyer.
 - (c) In the absence of specific instructions from Buyer otherwise, the carrier shall be UPS Ground Service, freight collect, proper insurance coverage included.
 - (d) Delivery shall be considered complete upon transfer of possession at ship to facility of Buyer and after satisfactory inspection of Goods is completed, whereupon title to the Goods shall pass to Buyer.
5. **Warranty**
 - (a) The warranty period shall be 12 months commencing on the day of acceptance of the Goods. The Seller shall remedy any defects and non-conformities immediately after Buyer's notification, free of charges to Diamond USA. The warranty period will be extended automatically by the duration of the notification and the satisfactory remedy of the defects.
 - (b) When circumstances necessitate, or when the Seller is in default, Buyer shall have the right, at the Seller's expense, to obtain replacement for the Goods or repair services from a third party of Buyer's sole choice.
6. **Payment terms**

All invoices from the Seller shall reference Buyer's Purchase Order Number and must be forwarded to the address as indicated by Buyer, immediately after delivery of Goods. Unless otherwise agreed upon in writing, payment terms are 30 days net after receipt of Goods at Buyer's ship to address in satisfactory condition.
7. **Material**

All material (drawings, models, calculations, specifications, tools etc.) which has been disclosed to Seller for the purpose of this Contract, remain the property of the Buyer. All Material shall be returned immediately upon written request from Buyer, or without request upon termination/completion of the contractual terms.
8. **Confidentiality**

Any material named in Section 7 and any other information regarding the business of Diamond USA that come to the Seller's knowledge in connection with the Contract, especially also information about the extent and the object of the delivery in connection with the purchase of the Goods, shall remain Buyer's property and be held in confidence by Seller. Such information shall not be reproduced or disclosed to others without Buyer's prior written consent.
10. **Choice of Law**

The construction, interpretation and performance of this Agreement shall be governed by the local laws of the Commonwealth of Massachusetts.
11. **Waiver**

Waiver by Seller of any breach of any provision contained herein shall not constitute or be deemed to be a waiver of any other breach or of such provision. No amendment to or modification or alteration of the Contract shall be effective against Seller without Seller's specific written agreement thereto.
12. **Dispute Resolution**
 - (a) Any controversy or claim, whether based in contract, tort, strict liability, fraud, misrepresentation, or any other legal theory, related directly or indirectly to this Agreement (the Dispute) shall be resolved solely in accordance with the terms of this Section 15.
 - (b) Disputes arising out of this Contract, not otherwise settled by mutual agreement between the parties, shall be settled by binding arbitration in Boston, Massachusetts, U.S.A. pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect.
 - (c) Any dispute Buyer has against Diamond USA with respect to this Agreement must be brought in accordance with this Section 15 within two (2) years after the cause of action arises.
13. **Entire Agreement**

This Agreement is the entire Agreement between the parties with respect to the products provided hereunder and supersedes all prior Agreements, proposals or understandings whether written or oral. This Agreement may not be amended except by subsequent written Agreement signed by the authorized representatives of both parties.