

Diamond USA Terms and Conditions of Sale

1. **General**

These Terms and Conditions of Sale (Contract) between Diamond USA (Seller) and Customer (Buyer) shall be deemed binding at the time the order is accepted and confirmed by Seller. Any conditions stipulated by the Buyer which are in addition or in contradiction to these Terms and Conditions shall only be valid if accepted by the Seller in writing.
2. **Prices**

Unless otherwise agreed in writing at the time of order confirmation, all prices and charges specified are based on U S dollars, FOB origin and are effective for thirty (30) days from the date of any quotation. Transportation shall be by carrier of Seller's choice, at Buyer's risk and expense, with shipping and handling, insurance, and related charges added to the quoted price. The Minimum Order Amount is \$100.
3. **Taxes**

Any sales, use, excise, or manufacturer's tax which may be imposed upon the sale or use of the Goods or any property tax levied after readiness to ship or any excise tax license or similar fee required under this transaction shall be in addition to the quoted prices and paid by Buyer. If Buyer is exempt from any taxes, Buyer shall furnish to Seller an appropriate tax exemption certificate in a form acceptable to the taxing authority.
4. **Terms of Payment**

Unless otherwise agreed by Seller in writing, payment terms are net thirty (30) days from date of invoice. A service charge of 1.5% per month, not to exceed the maximum rate allowed by law, shall apply to the portion of Buyer's outstanding balance which is not paid when due. If legal action is taken by Seller, Buyer shall be liable for Seller's reasonable attorney fees, plus other costs of such action.
5. **Delivery, Risk of Loss and Shipment.**
 - (a) Delivery and performance dates specified herein or otherwise communicated to Buyer are on best efforts only and are based on conditions at the time Seller accepts Buyer's purchase order.
 - (b) Delivery shall be complete upon transfer of possession to common carrier, FOB origin, whereupon title and all risk of loss, damage or destruction to the Goods shall pass to Buyer.
 - (c) In the absence of specific instructions by Buyer, the carrier will be selected by Seller. In no event shall Seller be liable for any delay in delivery by the carrier, nor shall the carrier be deemed an agent of Seller.
 - (d) Seller reserves the right to make partial shipments and to submit invoices for partial shipments.
6. **Changes and Cancellation:**

Orders accepted by Seller for Customer specified Goods, or special orders, are not subject to change or cancellation by Buyer after manufacturing/procurement is in progress, except with Seller's written consent and upon payment of an appropriate charge to cover the cost or loss incurred by Seller. Unless otherwise agreed in writing, such charge shall not be less than fifty (50%) percent of the price of the Goods subject to the change or cancellation.
7. **Warranty:**
 - (a) Seller warrants that on the date of shipment all Goods manufactured by Seller meet Diamond USA standard or Customer specified specifications and are free from defects in material and workmanship under normal use and service.
 - (b) No warranty extended by Seller shall apply to:
 - Any Goods which have been modified or altered by persons other than Seller;
 - Any Goods subjected to any misuse, neglect, improper installation or accidental damage; or
 - Any Goods manufactured by a third party
 - (c) Seller's exclusive obligation under this warranty is, at Seller's option, to repair or replace the defective Goods (FOB origin) or to refund to Buyer the purchase price paid for the defective Goods. Seller shall not reimburse or make any allowance to Buyer for any labor charges incurred by Buyer for replacement or repair of any Goods unless such charges are authorized in advance by Seller.
 - (d) This warranty is made on the condition that Buyer gives Seller immediate written notice of any defect (in no event later than ninety (90) days from the date of shipment), that Buyer gives Seller access to the Goods and Buyer's relevant records and data, and that Seller's inspection reveals that Buyer's claim is valid under the terms of this warranty. No returns will be accepted by Seller unless accompanied by Seller's Return Material Authorization (RMA).
 - (e) With respect to third party Goods, Seller's only warranty to Buyer shall be the warranty of their original manufacturer, and only to the extent any such warranties by the manufacturer are extended to Seller and transferable. Seller shall not be responsible for defects with respect to third party goods not manufactured or assembled by Diamond USA.
8. **This Warranty applies to the Goods only and not to any combination or assembly of the Goods or any Services of Seller. Seller makes no other Warranty other than the Warranty set forth herein. Such Warranty is in lieu of all other Warranties, expressed or implied, including but not limited to any implied Warranty of merchantability or fitness for a particular purpose.**
9. **Exclusion of Further Liability**

All cases of breach of Contract and the relevant consequences as well as all rights and claims on the part of the Customer, irrespective on what ground they are based, are exhaustively covered by these Terms and Conditions of Sale. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the Contract are excluded. In no case shall the Customer be entitled to claim damages other than compensation for costs of remedying defects in the Goods supplied. This in particular refers, but shall not be limited to, loss of production, loss of use, loss of orders, loss of revenue or profit and other direct or indirect or consequential damage. The Seller's maximum liability under this Contract shall be the Contract price.
10. **Tooling**

The Buyer shall not obtain title to tools by virtue of his paying tooling costs. Unless expressly agreed upon in writing, all tools shall remain the property of Diamond USA.
11. **Export:**

The Goods may be subject to U.S. government export controls and regulations and export may require a validated export license. Buyer agrees to abide by and assist Seller in complying with any such export controls and regulations.
12. **Changes to the Goods:**

Seller reserves the right to change the design, dimension, weight and specification of the Goods when necessary. Provided, however, Seller shall not make any change to Goods ordered by Buyer without the Buyer's consent if the change impairs the performance or function of the Goods.
13. **Choice of Law**

The construction, interpretation and performance of this Agreement shall be governed by the local laws of the Commonwealth of Massachusetts.
14. **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.
15. **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.
16. **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.