

TERMS AND CONDITIONS OF SALE

Please read these terms and conditions carefully. They materially affect the parties' obligations. Charter Dura-Bar, Inc. ("Seller") is bargaining for and will do business only on these terms and conditions (these "Terms"), and Seller's acceptance of orders is expressly subject to and conditioned on the buyer of any goods and/or services ("Buyer") assenting to these Terms.

- 1. ACCEPTANCE; CONTRARY TERMS; ENTIRE AGREEMENT.** All orders for goods and/or services ("Articles") are subject to acceptance by Seller at its office. Any price quotation referencing these Terms shall expire if not accepted within fifteen (15) days from the date of the quotation, unless otherwise stated in such quotation. **BUYER'S ORDER IS ACCEPTED ONLY ON THESE TERMS, AND THE PROVISIONS OF ANY PURCHASE ORDER OR OTHER WRITING INCONSISTENT HERewith SHALL NOT CONSTITUTE A PART OF THE CONTRACT OF SALE.** Seller's acceptance is conditional on assent to these Terms. If any of these Terms are not acceptable to Buyer, Seller must be notified promptly. If Seller does not receive Buyer's written objection to any of these Terms within ten (10) days of Buyer's receiving an acknowledgment from Seller, or if Buyer accepts delivery of Articles, these Terms shall be deemed irrevocably accepted by Buyer. The failure of Seller to object to provisions contained in any purchase order or communication from Buyer shall not be construed as an acceptance of any such provision or as a waiver of these Terms. Without limiting the foregoing, Seller expressly objects to all additional or contradictory terms specified in any other email, acknowledgement, purchase order, confirmation or other document supplied by Buyer pertaining to Articles, including without limitation those terms and conditions regarding warranty and indemnity. Upon Buyer's receipt of an acknowledgement from Seller, Buyer's order shall be non-cancellable unless Seller shall consent thereto in a writing hand-signed by Seller. No online or electronic terms or conditions of Buyer will be binding on Seller even though such terms were "accepted" in order to access or use a system. These Terms, together with the email, price quotation, order acknowledgement or similar form issued by Seller and referencing these Terms, is intended by the parties to be the final expression of their agreement (the "Agreement") and is intended also as a complete and exclusive statement of the terms and conditions thereof. No modification of any term or condition will be valid or binding upon Seller unless approved by Seller in a writing hand-signed by Seller.
- 2. EXCUSE FROM PERFORMANCE.** Seller shall not be liable for any costs, expenses or damages of any nature (whether general, consequential, as a penalty or liquidated or otherwise) if performance is rendered impracticable by any accident; breakdown; sabotage; riot; insurrection; war; delay; interruption in or failure of sources or subcontractors to supply materials and equipment; strike, labor or transportation problem; act of God; other causes and conditions, whether of like or different nature, that are beyond Seller's reasonable control; and orders, contracts, priorities, directives, requisitions or requests of the federal or state governments, whether or not voluntarily assumed. In the event of any such delay, at Seller's option, (a) the date of delivery shall be extended for a period equal to the time lost by reason of the delay, or (b) Seller will be excused from performance and Buyer will promptly, upon Seller's request, pay to Seller for any part or parts then completed or in process an amount determined by Seller to represent the proportionate price of the order so completed or in process.
- 3. TAXES AND FEES.** Unless otherwise specified in this Agreement, prices stated in this Agreement do not include any manufacturers, sales, use or excise taxes, charges or duties, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on or measured by any transaction between Seller and Buyer. Buyer will pay all such taxes, fees, charges and duties. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore. Buyer will also pay Seller any collection fees and all attorneys' fees incurred by Seller in enforcing this Agreement or defending against any claim for breach of this Agreement. Prices stated in this Agreement do not include travel or other out-of-pocket expenses incurred by Seller in connection with the performance of any services included within the Articles, and Buyer agrees to reimburse Seller for all such expenses.
- 4. PRICES; PAYMENT.** Unless specifically held open for a length of time on Seller's Quotation, all prices are subject to change without notice and any unshipped balances on purchase orders will be invoiced to and paid by Buyer at Seller's prices in effect at the time of shipment. Seller makes no warranty with respect to price, and Seller shall be free to sell Articles to other buyers for a lower price than that charged to Buyer. All payments shall be due in full Net 30 days from the date of Seller's invoice. Seller reserves the right to require full cash payment in advance or at the time of shipment whenever, for any reason, doubt as to Buyer's financial responsibility develops, and Seller shall not in such event be liable for non-performance. A service charge shall be incurred if payment is received after the due date, calculated as one and one-half percent (1 1/2%) of the invoice amount for every thirty (30) days (or fraction thereof) from the due date. For example, if payment is received between one (1) and thirty (30) days from the due date, the service charge shall be calculated as one and one-half percent (1 1/2%) of the invoice amount; if payment is received between thirty-one (31) and sixty (60) days from due date, the service charge shall be calculated as three percent (3%) of the invoice amount; if payment is received between sixty-one (61) and ninety (90) days from due date, the service charge shall be calculated as four and one-half percent (4 1/2%) of the invoice amount. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Articles if Buyer fails to pay any amounts when due hereunder.
- 5. RISK OF LOSS; SHIPMENT.** Unless otherwise specified in this Agreement, all shipments are F.O.B. Seller. Risk of loss will pass to Buyer at the time Articles are tendered for shipment. In the absence of shipping instructions, Seller will use its discretion as to the selection of shipping services and routes. Seller assumes no responsibility in connection with the shipment of articles to Buyer. All freight, shipping, drayage, boxing, crating, and other charges, both to and from Seller's facility, are the responsibility of Buyer. Title to Articles will remain with Seller until full payment is received by Seller. Shipping dates on any purchase order or material release order are estimates only. Seller will use reasonable efforts to meet the estimated shipping date, subject to Buyer's prompt provision of all necessary, complete and correct specifications, information and data, but Seller shall not be held responsible for failure to meet such estimated date. If Buyer requires special production service for unusual shipments, an additional charge shall be imposed, as agreed upon by the parties. All acknowledgements are based on Buyer accepting overrun and underrun not exceeding 10% of the quantity acknowledged.
- 6. TERMINATION.** In addition to any remedies that may be provided under these Terms or applicable law, Seller may terminate this Agreement without liability and with immediate effect upon notice to Buyer for any reason or no reason at all, including if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
- 7. CERTAIN BUYER OBLIGATIONS.** Buyer shall (a) cooperate with Seller in all matters relating to the Articles and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing any services included in the Articles; (b) respond promptly to any Seller request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Seller to provide the Articles in accordance with the requirements of this Agreement; and (c) provide in a timely manner such

customer materials or information as Seller may request in order to provide the Articles, and ensure that such customer materials or information are complete and accurate in all material respects.

- 8. EXCLUSIVE WARRANTY.** Seller warrants that at the time of shipment the Articles will be free from defects in materials and workmanship. The warranty expressly provided herein may only be asserted by Buyer and may not be asserted by Buyer's customers or other users of Articles. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER DISCLAIMS ALL WARRANTIES THAT MAY OTHERWISE ARISE AS A RESULT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES OTHER THAN THOSE EXPRESSLY STATED HEREIN.
- 9. LIMITATION OF REMEDIES AND DAMAGES.** Seller's liability and Buyer's sole and exclusive remedy hereunder will be limited to repair, replacement or credit, at Seller's option, with respect to Articles found by Seller in its sole discretion to be defective and returned to Seller at Buyer's expense within 30 days after Buyer's receipt of such Articles. No Articles may be returned without Seller's express written preauthorization. Seller shall not be liable for a breach of warranty if: (a) the defect arises because Buyer fails to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Articles; (b) Buyer alters or repairs the Articles without the prior written consent of Seller; or (c) Articles become defective or inoperative due to normal use, accident, misapplication, abuse or misuse. SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, COSTS OF SUBSTITUTE ARTICLES, MACHINE WORK OR LABOR COSTS, ARISING FROM THE SALE, USE OR INSTALLATION OF ARTICLES, FROM ARTICLES BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER ARTICLE, OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER CONCERNING THE SALE, USE OR INSTALLATION OF ARTICLES, EVEN IF SELLER IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER BY BUYER FOR THE ARTICLES WITHIN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO BUYER'S CLAIM. THE LIMITATIONS SET FORTH HEREIN SHALL BE VALID AND ENFORCEABLE NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY SET FORTH HEREIN.
- 10. EXCLUSION OF TORT REMEDIES.** This is a commercial sales transaction. The parties want it to be governed by Article 2 of the Uniform Commercial Code and related commercial legal principles. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR TO ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT.
- 11. PATENT INDEMNITY; LIMITATION OF RESPONSIBILITY AND DAMAGES.**

 - (a) In the event any Article not made to Buyer's specifications is claimed to infringe any United States patent, copyright, trademark or other trade designation, trade secret, or other intellectual property right in effect in the United States at the time Buyer's order is accepted, Seller agrees, at Seller's option: (1) to procure for Buyer the right to use the Article; or (2) to modify or replace the Article so as to avoid infringement, or (3) to accept re-delivery of the Article and reimburse Buyer for the purchase price, less the cost of any damage to the Articles. Should any litigation be instituted against Buyer based on the claim that any Article in the condition received from Seller so infringes, Seller will undertake the defense on Buyer's behalf and pay any damages and costs awarded therein against Buyer, provided Seller is given prompt written notice and is furnished with copies of all demands, process and pleadings; and provided Buyer cooperates fully in giving Seller authority, information and assistance at Seller's expense for such defense, as well as control over the defense and settlement and negotiations with regard to settlement.
 - (b) THE FOREGOING REPRESENTS SELLER'S ENTIRE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CHARGE OF INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT AND IS IN LIEU OF ANY STATUTORY WARRANTY RELATING TO INFRINGEMENT. SELLER WILL HAVE NO RESPONSIBILITY INsofar AS ANY ARTICLE IS MODIFIED BY BUYER OR IS MADE OR MODIFIED BY SELLER IN ACCORDANCE WITH BUYER'S ORDER, AND BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER, ITS PARENT AND SUBSIDY ENTITIES, AND ITS AND THEIR EMPLOYEES, CUSTOMERS, USERS, SUCCESSORS AND ASSIGNS, HARMLESS AGAINST ALL DAMAGES, COSTS OR EXPENSES, INCLUDING ALL ATTORNEYS' FEES, PAID OR INCURRED BY SELLER IN CONNECTION WITH ANY CLAIM WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY CLAIM OF INFRINGEMENT OF A PATENT, COPYRIGHT OR TRADEMARK, TRADE SECRET, OR OTHER PROPRIETARY RIGHT, WHICH ARISES OUT OF SELLER'S COMPLIANCE WITH BUYER'S SPECIFICATIONS. SELLER WILL ALSO HAVE NO RESPONSIBILITY WITH REGARD TO ANY SETTLEMENT, ADMISSION OR PROMISE MADE BY BUYER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, NOR WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOST PROFITS, CLAIMED TO HAVE BEEN SUSTAINED BY BUYER OR ANY USER OF AN ARTICLE ARISING OUT OF ANY CLAIM OF INFRINGEMENT.
 - (c) Seller may be entitled to indemnification from certain of its suppliers, and the rights and options vested in Seller will extend to such suppliers and may be exercised by them.
- 12. INTELLECTUAL PROPERTY OWNERSHIP.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), and all trade dress, trade names, logos, corporate names, domain names, trademarks, service marks, trade secrets, know-how and other confidential information, together with all derivative works and all goodwill associated therewith, and all other rights in and to all Articles, documents, work product, drawings, designs, prints, and other materials that are delivered to Buyer under this Agreement or prepared by or on behalf of Seller in the course of performing under this Agreement, shall be owned by Seller. Except as otherwise expressly and specifically provided, no license, transfer or assignment of Seller's proprietary rights shall occur as a result of this Agreement or any order. Buyer acknowledges and agrees that any Seller documents, work product, drawings, designs, prints, or other materials provided to Buyer are being provided solely for the purpose of facilitating the placing of orders by Buyer with Seller, and Buyer may not use such materials for any other purpose whatsoever, including without limitation for sourcing any product or services from any supplier other than Seller. Buyer warrants that any trademarks Buyer requests Seller to affix to any Article is owned or authorized for use by Buyer.
- 13. TOOLS.** All dies, tools, patterns and the like involved in the manufacture of Articles are and shall remain the property of Seller, even though the cost thereof is included as part of the price quoted and/or charged to Buyer.

- 14. OFAC REPRESENTATION.** Buyer represents and warrants that Buyer is and shall at all times remain in compliance with all laws administered by the U.S. Treasury Office of Foreign Assets Control or any other governmental entity imposing economic sanctions and trade embargoes (“Economic Sanctions Laws”) against designated countries, entities and persons (“Embargoed Targets”). Buyer is not an Embargoed Target or subject to any Economic Sanctions Law, and Buyer shall not (a) directly or indirectly export, re-export, transship or otherwise deliver Articles or any portion of Articles to an Embargoed Target or (b) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law.
- 15. CLAIMS; CANCELLATIONS AND CHANGES.** All claims for error in weight, Article type or quantity must be made in writing within ten (10) days of receipt of the Article with respect to which the claim is being made, and must specify the weight, quantity and condition of the Article which was received by Buyer. Seller reserves the right to accept or reject any such claim in whole or in part. Failure to make any such claims within such time is deemed to constitute Buyer’s irrevocable acceptance of Articles. Any request by Buyer for cancellation, termination, modification, suspension, or delay in shipment of Buyer’s order may be accepted or rejected by Seller in its sole discretion. Buyer will fully indemnify and reimburse the Seller against all losses, costs, and expenses (including without limitation all indirect and overhead charges and a normal profit) arising in connection with any such request by Buyer that is accepted by Seller. No change proposed by Buyer in any term or condition will be valid or binding upon Seller unless approved in writing by Seller’s duly authorized personnel. SELLER GENERALLY WILL BE UNABLE TO APPROVE ANY CHANGE PROPOSED BY BUYER LESS THAN FORTY-FIVE (45) DAYS PRIOR TO SHIPMENT, AND IN NO EVENT MAY BUYER CANCEL, MODIFY, SUSPEND OR DELAY SHIPMENT IF NOTICE OF SUCH PROPOSED CHANGE IS NOT RECEIVED BY SELLER AT LEAST 45 DAYS PRIOR TO SHIPMENT AND APPROVED BY SELLER IN WRITING.
- 16. SECURITY INTEREST.** Buyer hereby grants to Seller and Seller hereby retains a security interest in all Articles and accessories and additions thereto sold by Seller and held by Buyer, wherever located, whether now existing or hereafter acquired, all spare parts and components therefore, and all proceeds of the sale or other disposition including, without limitation, cash, accounts, contract rights, instruments and chattel paper. Buyer shall join with Seller in executing one or more financing statements pursuant to the Uniform Commercial Code if requested by Seller and then in a form satisfactory to Seller to evidence and perfect Seller’s security interest in all Articles. In the event Buyer shall be in default under this agreement, Seller shall have the remedies of a secured party under applicable law, including without limitation the Uniform Commercial Code, and Seller may thereupon enter the premises of Buyer and remove and repossess all Articles. Buyer agrees to pay all costs incurred by Seller in collecting any amounts due hereunder or in otherwise exercising its rights and remedies hereunder, including all of Seller’s attorney’s fees, and all such amounts due from Buyer shall be secured by the foregoing security interest. The security interest granted under this provision constitutes a purchase money security interest under applicable law.
- 17. SETOFF.** Seller may set off any amount due from Buyer, whether or not under this Agreement, against any amount due Buyer hereunder. Buyer may not set off any amount due from Seller, whether or not under this Agreement, against any amount due Seller hereunder without Seller’s prior written consent.
- 18. CONFIDENTIALITY.** Buyer acknowledges that all information furnished by Seller and any other person acting on behalf of Seller, whether in writing, verbally, electronically, or otherwise, and all information learned or observed about Seller or its operations through performing this Agreement or any order, shall be deemed “Confidential Information.” Buyer agrees to maintain and protect the confidentiality of the Confidential Information, and to not disclose the Confidential Information except as legally required (and then only to the minimum extent legally required), and except to Buyer’s employees who are bound by obligations of confidentiality with respect to such Confidential Information at least as stringent as those set forth herein, and who have a need to know such Confidential Information for the purpose of fulfilling Buyer’s obligations hereunder. Buyer shall be responsible for any breach of the confidentiality and non-use obligations set forth herein by such employees. Buyer may only be use the Confidential Information in the performance of its obligations hereunder, and may not use the Confidential Information for any other purpose. Buyer shall return to Seller, or destroy, with such destruction certified in writing to Seller, within five (5) days of the earlier of a request from Seller or the termination of this Agreement, all Confidential Information, and all written materials, and copies thereof, including materials stored in electronic media, containing, incorporating, or otherwise based upon the Confidential Information. This provision shall survive any termination of this Agreement for any reason, and in the event of any breach or threatened breach of this provision, Seller shall be entitled, in addition to any other remedies and damages, to injunctive relief without the necessity of paying bond and without being required to prove the amount or insufficiency of damages.
- 19. SOLICITATION OF PERSONNEL.** For so long as there is any order for Articles in effect between Buyer and Seller and for twelve (12) months thereafter, Buyer agrees that it shall not solicit for employment any employee or contractor of Seller. Seller shall not be restricted from soliciting any employee, contractor or customer of Buyer.
- 20. INSURANCE.** During the term of this Agreement, Buyer shall, at its own expense, maintain and carry insurance in full force and effect in amounts and types satisfactory to Seller. Upon Seller’s request, Buyer shall provide Seller with a certificate of insurance evidencing the insurance coverage. Buyer shall provide Seller with thirty (30) days’ advance written notice in the event of a cancellation or material change in Buyer’s insurance policy. Under no circumstances shall Seller be required to provide additional insured status to Buyer, nor shall Seller’s insurer be required to waive subrogation rights against Buyer or Buyer’s insurer. Seller shall only be required to maintain insurance that is consistent with its own usual internal policies.
- 21. NOTICES.** Any notice relating to this Agreement must be in writing and will be considered given within three days after it is deposited, postage prepaid, with a registered mail service and addressed to the other party at the address given in this Agreement; or, if delivered by hand, when so delivered.
- 22. ASSIGNMENT.** Buyer may not assign any of its rights, duties or obligations under this Agreement without Seller’s prior written consent. Any attempted assignment without Seller’s consent, even if by operation of law, will be void. Seller may assign this Agreement. If Seller so assigns, Buyer releases Seller from all liability under this Agreement and agrees to hold the assignee solely responsible for performance of all obligations.
- 23. CORRECTIONS.** Clerical and stenographic errors are subject to correction.
- 24. CONTROLLING LAW AND DISPUTE RESOLUTION.** The validity, construction and enforcement of this Agreement will be governed by and interpreted under the local, domestic law of the State of Wisconsin, including, without limitation, its provisions of the Uniform Commercial Code. The United Nations Convention on Contracts for the International Sales of Goods (CISG) shall not apply to this Agreement. Any controversy or claim arising out of or in connection with this Agreement shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any such arbitration shall occur in Milwaukee, Wisconsin, and shall be conducted in the English language.

25. **WAIVER.** The failure of Seller to insist upon a strict performance of any of these Terms shall not be considered as a continuing waiver of any such term or condition, or any other term or condition, or any of Seller's rights. In addition, if any of the terms of this Agreement are held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect the remainder of this Agreement and such remainder shall remain in full force and effect. The termination of this Agreement shall not terminate any indemnification or confidentiality obligation of Buyer hereunder.
26. **INDEPENDENT CONTRACTORS.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
27. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
28. **SURVIVAL.** The parties' rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, compliance with laws, warranties, limitations on liability, confidentiality and non-solicitation of employees, shall survive any termination or expiration of this Agreement.
29. **PRODUCTION LOCATION.** Seller reserves the right to produce any order at any of its manufacturing locations unless a separate written agreement is in place between Buyer and Seller specifying a single production location.