

Terms of Sale

The contract for the sale of the products and services (collectively, the "Products") described on the front of this document by The Penrod Company ("Seller") to the buyer identified there ("Buyer") is expressly limited to the terms set forth, or expressly incorporated by reference, on this document ("Terms"). The Terms will be deemed to be accepted and agreed to by Buyer upon Buyer's acceptance of delivery of any of the Products, or any other action by Buyer acknowledging this document.

1. Seller may cancel or delay shipment of any accepted order if Buyer's credit becomes impaired or unsatisfactory to Seller, if Buyer fails to meet any financial obligation to Seller, or if any other event or circumstance occurs or exists which causes Seller to believe that cancellation or delay of the order is advisable. Seller is not responsible for any delay in shipment or delivery of Products occurring after Seller delivers the Products to a common carrier for shipment, or due to any cause beyond Seller's control. All sales by Seller are final, and no Products may be returned without prior written authorization from Seller.
2. Unless otherwise specified on the front of this document, all prices for sales made by Seller are F.O.B. (as that term is defined in the Uniform Commercial Code in effect in Virginia, United States) loaded truck, port from which the Products are sent with all freight, insurance, taxes, and other transaction costs paid by Buyer. All risk of loss or damage will be borne by Buyer after delivery of any Products to the carrier at the F.O.B. point. Payment terms are net 10 days from date of invoice, unless otherwise specified in writing by Seller. A finance charge on balances remaining unpaid as of the due date will be assessed from date of invoice at the lesser of 1½% per month or the highest rate permitted by law. Payment, price and credit terms are subject to change without notice.
3. Seller warrants that it will maintain consistent standards of quality and workmanship. There are no other warranties or representations which have been made by Seller or relied upon by Buyer. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, AND IS STRICTLY LIMITED TO ITS TERMS. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR OF SUITABILITY OR FITNESS OF ITS PRODUCTS FOR ANY PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT OF PATENT OR OTHER RIGHTS OF THIRD PARTIES BY ANY OF ITS PRODUCTS. SELLER DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTY OF TITLE, FOR ANY PRODUCT SUPPLIED TO SELLER BY BUYER.**
4. In no event will Seller be liable for any claim or demand against it by any party other than Buyer or for any special, indirect, economic, incidental, or consequential damages, regardless of whether Seller knows or is advised of the possibility of such damages. The sole and exclusive remedy of Buyer shall be the repair or replacement of Product or, at Seller's sole option, refund of the purchase price of any Product, and liability of Seller with respect to any contract or sale or anything done in connection herewith, whether in contract, in tort, under any warranty, or otherwise, shall not exceed the price of the Product on which such liability is based. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective Product or refunds the purchase price of such Product.
5. Seller shall not be liable for any delays or defaults under these Terms by reason of fire, floods, pandemics or epidemics (including COVID-19 and its variants), acts of God, labor troubles, inability to secure raw materials, acts of government (including government shutdown orders), or other causes beyond its reasonable control. In the event of such delay, the date of delivery shall be extended for a period equal to the time lost by reason of delay.
6. All claims of Buyer arising hereunder shall be forever barred unless Buyer gives written notice thereof within 30 days from the event or omission giving rise to such claim. Failure by Buyer to give notice of such claim in accordance with this paragraph shall constitute an absolute bar to such claim. Buyer shall have a period of one year from the date of its notice in which to file suit and failure to do so shall constitute an absolute bar to any claim of Buyer.

7. This document (together with any other written agreement between the parties that incorporates the Terms by reference) constitutes the entire integrated agreement between Seller and Buyer and supersedes all prior oral or written agreements and understandings. Seller objects to and rejects all additional or different terms in any purchase order or other writing sent by Buyer.

8. The parties agree that their relations have a substantial connection with the Commonwealth of Virginia and accordingly agree that the substantive laws of the Commonwealth of Virginia shall apply to any disputes. The choice of law principles of the Commonwealth of Virginia shall not be utilized to cause the law of another jurisdiction to apply. These Terms expressly and entirely exclude the United Nations Convention on Contracts for the International Sale of Goods.

9. Buyer agrees to pay, indemnify and hold Seller harmless against all claims, suits, expenses, losses, liability and costs incurred by Seller (including costs of investigation, negotiation, collection agencies, attorneys' fees and expert fees), arising out of or resulting from (i) any acts or omissions of Buyer or its agents or employees resulting in any suit or claim against Seller; or (ii) any disputes, collection actions, or litigation arising out of dealings between Seller and Buyer resolved in Seller's favor. Should Seller be entitled to indemnification or successfully pursue relief against Buyer (whether in court or in alternative proceedings), including specifically its right to collect any sums due, it shall also be awarded its full costs of investigation, negotiation, dispute resolution, litigation, and settlement (including actual court costs, collection agency fees, reasonable attorneys' fees, and expert fees, and expenses (collectively, "Costs and Expenses"). At Seller's sole election, it may collect 25% of the amount owed by Buyer to Seller as compensation for the Costs and Expenses. Buyer understands that the 25% amount is intended to take into account and anticipate post-judgment collection efforts).

10. The parties will attempt to settle all disputes, controversies or claims - whether based on contract, tort, statute, fraud, misrepresentation or any other legal theory - through good faith negotiations. If those attempts fail to resolve the dispute within 45 days of the date of initial demand for negotiations, then the parties shall try in good faith to settle the dispute by mediation conducted in Virginia Beach, Virginia, under the then-current CPR Mediation Procedure of the CPR International Institute for Conflict Prevention and Resolution, Inc. Any remaining disputes not settled by mediation within forty-five (45) days of the initial demand for mediation, shall be resolved by arbitration in Virginia Beach, Virginia, under the then-current Commercial Arbitration Rules of the American Arbitration Association (or, only in the case of disputes relating to sales outside the United States, the then-current International Arbitration Rules of the American Arbitration Association). The arbitrator shall not have the power to award damages in excess of actual damages, such as punitive damages and damages excluded under paragraph 4 of the Terms. This provision shall apply to all claims of Buyer, regardless of when those claims arose or accrued.

11. The parties hereby irrevocably submit to the personal jurisdiction of the courts of competent jurisdiction located in Norfolk and Virginia Beach, Virginia, U.S.A. with respect to any litigation brought with reference to these Terms or the Products, including without limitation, any litigation to enforce the agreement herein to arbitrate. The courts of competent jurisdiction located in Norfolk and Virginia Beach, Virginia, U.S.A. shall have exclusive jurisdiction with respect to any litigation brought regarding the agreement herein to arbitrate.