

GRIPPLE INC. TERMS AND CONDITIONS OF SALE

1. **General.** These Terms and Conditions set forth the terms and conditions pursuant to which the purchaser ("Purchaser") will purchase and Gripple Inc. ("Seller") will sell any and all Gripple-brand products or other products or services ("Products").

2. **Purchase Orders.** All purchase orders of Purchaser shall, unless otherwise agreed to in writing by Seller, be in writing and set forth the quantity of the Products desired, the specifications therefor, the desired delivery date, the price of each Product, and all other relevant information necessary to effectuate shipment of the Products by Seller. Such purchase orders shall be limited and subject to acceptance of these Terms and Conditions and no additional, inconsistent or contrary terms shall become part of this agreement or any sale of Products to Purchaser by Seller unless specifically accepted in writing signed by Seller.

3. **Acceptance/Return.** All orders for Products shall be subject to acceptance by Seller at Batavia, Illinois or such other location as directed by Seller. Purchaser shall not return any Products actually delivered to Purchaser without the written consent of, and upon terms agreed to, by Seller.

4. **Price.** Prices shall be those in effect at the time of order entry. Prices are subject to change by Seller without notice. Seller's prices do not include sales, use, excise or similar taxes. Consequently, the amount of any present or future sales, use or other similar tax applicable to the sale or use of the Products shall be paid by Purchaser.

5. **Payment/Delinquency Charge.** Payment terms are net thirty (30) days from the date of Seller's invoice. Seller shall extend a one-and-one-half percent (1.5%) discount on sales where payment-in-full is received within ten (10) days of Seller's invoice date. Discounts and any other incentives are subject to change, suspension or cancellation by Seller without notice. Seller reserves the right to charge interest at the rate of 1.5% per month (but not more than the maximum percentage permitted by law) on all balances not paid by Purchaser within the designated net terms.

6. **Delivery and Freight Charges.** All delivery dates are approximates only and based upon prompt receipt of all necessary information from Purchaser. Unless otherwise instructed, Seller will ship Products to Purchaser via regular United Parcel Service (UPS) delivery or similar carrier, F.O.B. Seller's facility or other place of shipment. Risk of loss shall pass to Purchaser at the F.O.B. point. Notwithstanding the provisions contained herein to the contrary, Seller shall not be responsible or liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages, resulting from Seller's delayed performance in shipment or delivery of the Products for any reason whatsoever. All freight charges stated on Seller's invoices are part of Seller's payment terms.

7. **Warranty.** Seller warrants that Products sold hereunder will be free from defects in material and workmanship at the time of shipment from Seller's facility or other place of shipment. **SELLER'S WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF SELLER AND THE MANUFACTURER OF THE PRODUCTS (COLLECTIVELY, "Manufacturing and Selling Parties"), WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR NON-INFRINGEMENT. IN NO EVENT SHALL SELLER OR THE MANUFACTURING AND SELLING PARTIES BE LIABLE (AND PURCHASER SHALL NOT ASSERT ANY CLAIM) FOR SPECIAL, INCIDENTAL, COMPENSATORY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS. PURCHASER'S SOLE AND EXCLUSIVE REMEDIES UNDER THIS WARRANTY SHALL BE LIMITED, AT SELLER'S EXCLUSIVE DISCRETION, TO: (1) REPLACEMENT OF ANY DEFECTIVE PRODUCTS OR PART THEREOF; (2) REPAIR OF ANY DEFECTIVE PRODUCTS OR PART THEREOF; OR (3) RETURN OF THE PURCHASE PRICE FOR ANY DEFECTIVE PRODUCT OR PART THEREOF. IN NO EVENT SHALL PURCHASER SEEK OR RECOVER PUNITIVE OR EXEMPLARY DAMAGES.** The warranty and remedy set forth above are conditioned upon the proper storage, use and maintenance of the Products and conformance with all applicable recommendations of the Manufacturing and Selling Parties with respect to the Products. Manufacturer's Recommendations may be obtained by telephoning Seller, toll free, at 1-866-GRIPPLE (1-866-474-7753). No agent, employee or representative of Seller (or any distributor, dealer or sales representative of Seller) has the authority to bind Seller to any affirmation, representation or warranty concerning the Products sold hereunder, and unless such affirmation, representation or warranty is specifically included in these Terms and Conditions, it will not form a part of the basis of these Terms and Conditions and shall in no way be binding upon the Seller or enforceable by Purchaser. Except as expressly agreed to by Seller in writing, the Products are not rated or certified for any particular application or environment.

8. **Indemnity.** Except for warranty claims of Purchaser as expressly authorized and limited by paragraph 7 above, Purchaser shall indemnify and hold the Manufacturing and Selling Parties, and their respective employees and agents, harmless from and against any and all claims, losses, liabilities, damages or expenses whatsoever, including arising from any alleged injury to person, property or business, arising from or in any way relating, directly or indirectly, to the delivery, assembly, erection, installation, use or repair of the Products and/or any related or other claims or losses, whether or not caused by the Purchaser and/or its agents or employees or any of their acts, omissions or negligence.

9. **Dispute Resolution.**

(a) Purchaser agrees that it shall submit all claims, controversies or disputes arising out of this

before the American Arbitration Association ("AAA") at Chicago, Illinois, before a panel of three (3) arbitrators, conducted under the then-in-effect Commercial Arbitration Rules of the AAA. Any judgment upon any award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. If any suit or proceeding is filed by Purchaser in any court or other forum, on application of Seller, such suit or proceeding shall be dismissed or stayed until arbitration has been had in accordance with these Terms and Conditions. In no event shall the arbitrators have the authority to award damages inconsistent with these Terms and Conditions, including punitive or exemplary damages.

(b) Purchaser hereby submits to the jurisdiction of the federal and state courts for DuPage County, Illinois, and Purchaser consents to the venue of such courts. Notice of process in connection with any proceedings may be served upon Purchaser by registered or certified mail with the same effect as if personally served. Seller reserves the right to assert any claims against Purchaser in such courts, or to submit such claims to arbitration as provided above.

(c) TO THE FULLEST EXTENT PERMITTED BY LAW, PURCHASER HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION RELATING TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE PRODUCTS AND/OR THE RELATIONSHIP OF THE PARTIES.

10. **Compliance With Laws and Standards, and Safety Precautions.** Purchaser shall comply with and be responsible for all federal, state and local laws, regulations and ordinances (including building codes) and all industry standards which are or may hereafter be in effect from time to time with respect to selection, installation and/or use of Products. Purchaser shall exercise suitable safety precautions, and shall require employees to follow all installation and use procedures and recommendations as published by the Manufacturing or Selling Parties, including to prevent injury or damage to person or property. It is Purchaser's responsibility to provide all the means that may be necessary to effectively protect all employees and other persons from serious bodily injury which otherwise may result from the method of installation or use of the Products. If Purchaser fails to comply with the provisions of this paragraph or the applicable standards or regulations aforementioned, Purchaser shall indemnify and save the Manufacturing and Selling Parties, and their respective employees and agents, harmless from and against any and all claims, losses or damages arising therefrom.

11. **Force Majeure.** Seller's obligations hereunder are subject to, and Seller shall not be held responsible for, any delay or failure to make delivery of all or any part of the Products due to acts or circumstances beyond the control of Seller, including, but not limited to, labor difficulties, fires, casualties, accidents, acts of God, acts of war or terror, transportation difficulties, inability to obtain Products, materials or components or qualified labor sufficient to timely perform part or all of any obligation, or governmental regulations or actions. In the event of the occurrence of any of the foregoing, at the option of Seller, Seller shall be excused from the performance hereunder or the performance of the Seller shall be correspondingly extended.

12. **Miscellaneous Provisions.**

(a) These Terms and Conditions constitute the entire agreement between Seller and Purchaser as it relates to the purchase and sale of Products to Purchaser by Seller and the liability of the Manufacturing and Selling parties, and supersede any and all prior or contemporaneous written or oral agreements, correspondence, quotations, understandings, negotiations or discussions between the parties relating to the subject matter hereof. It is expressly agreed that any brochures, sales literature, on-line materials or other materials of Seller have been provided for informational purposes only, have not been relied upon by Purchaser, do not form or give rise to any warranty, and are superseded by these Terms and Conditions.

(b) If any term or condition or part of these Terms and Conditions is held invalid, the remaining terms and conditions hereof shall not be affected thereby.

(c) These Terms and Conditions may be modified, canceled or assigned only by a written agreement by both parties executed by their duly authorized agents.

(d) All rights available to Seller under the Uniform Commercial Code ("UCC") except as specifically limited or excluded herein (even though not specifically enumerated), are reserved to Seller as remedies available in the event of default or breach by Purchaser.

(e) This agreement and any sale of Products to Purchaser shall be deemed to have been made in and governed by the substantive laws of the State of Illinois, without regard to choice-of-law provisions. The parties opt out of the U.N. Convention of Contracts for the International Sale of Goods.

(f) Any failure by either party to enforce at any time any term or condition hereof shall not be considered a waiver of such party's right thereafter to enforce the same or any other term or condition hereof.

(g) These Terms and Conditions shall be binding upon the successors, legal representatives and permitted assigns of Purchaser and Seller.

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