

General Terms and Conditions of Sale of CABB North America, Inc.

1. Offer and Conclusion of Contract. THE PRESENT TERMS AND CONDITIONS (“TERMS”) SHALL EXCLUSIVELY APPLY TO ALL OUR PRESENT AND FUTURE DELIVERIES AND THE CONTRACTS RELATING THERETO (“SALES CONTRACTS”). TERMS AND CONDITIONS OF OUR CLIENTS (“BUYERS”) SHALL NOT BE APPLICABLE, EVEN IF WE FAIL TO EXPRESSLY REJECT THEM. THE TERMS AS LAID DOWN HEREUNDER SHALL ALSO BE APPLICABLE IF WE EXECUTE BUYER'S ORDERS WITHOUT ANY PROVISIO, KNOWING THAT CONTRADICTORY OR DIVERGING TERMS AND CONDITIONS EXIST. Our quotations are submitted without obligation and are non-binding, unless expressly submitted in writing as binding. We are free to accept an order from a Buyer which qualifies as an offer to conclude a purchase contract within two weeks of receipt. Our execution of an order without confirmation is to be considered as our acceptance. Only terms of Sales Contracts made in writing shall be enforceable against CABB. “Writing” or “written” within the meaning of these Terms shall also include e-mails.

2. Scope of Contractual Obligations.

- a) The scope of obligations shall be governed by the respective Sales Contracts, which shall consist of CABB’s written confirmation of order or invoice, as the case may be, supplemented by these Terms and Conditions.
- b) Delivery dates shall not be binding unless they have been expressly stated to be binding. The quality of the goods due shall be determined exclusively in accordance with the standard specification or the specification agreed.
- c) CABB shall be entitled to effect partial shipments if the Buyer can reasonably be expected to accept such partial shipments under the circumstances of the particular case. Invoices for any partial shipment shall be payable irrespective of the completion of delivery.
- d) Product details and criteria for use in catalogues, instruction leaflets, safety data sheets and other information material that we make available to the Buyer, as well as descriptive product details, are not to be understood as guarantees for a particular quality of the goods nor as a binding representation or agreement of the quality. Such quality guarantees and quality agreements must be expressly agreed as such in writing.

3. Prices and Payment.

- a) The prices are in US dollars and are net prices free of any sales or value added tax, duties, shipping, insurance, or any other or any other charges, which shall be in addition to quoted prices. Prices are calculated on the weight/quantity of the delivery at the time of dispatch.
- b) Bills of exchange may be accepted only after prior written agreement, on account of performance and on condition of being eligible for refinancing with central banks. All charges incurred for the payment of bills and transfers shall be met by the Buyer.
- c) If the Buyer is in default of payment, interest at 18% or the highest legal rate, whichever is higher, shall be charged on the overdue amount. CABB reserves the right to pursue further claims for damages due to delayed performance.
- d) If the Buyer is in default of payment and in the case of other justified doubts as to the Buyer’s solvency or creditworthiness, CABB shall be entitled – notwithstanding our other rights – to demand advance payment for all deliveries not yet made or services not yet rendered and to require immediate payment of all CABB’s claims arising from the business relation. CABB’s obligation to supply shall be suspended while the Buyer is in arrears with a due payment.
- e) The Buyer has the right to offset payments due only as and when respective Buyer’s claims have become final and are not contested or have been accepted by CABB. The Buyer is only allowed to invoke rights of retention if the Buyer’s claim against CABB is based on the same transaction generating the payment owed to CABB.
- f) **CABB reserves the right to adjust our prices if decreases or increases of cost occur after conclusion of a Sales Contract, in particular due to collective agreements or changes in prices of raw materials. Such changes will be documented to the Buyer upon request.**

4. Force Majeure. Events of force majeure shall release the affected party from the obligation to deliver or accept delivery for the duration of the disruption plus a subsequent, reasonable start-up time to the extent of the effect of the disruption. For the purposes hereof, an event of force majeure shall mean any event beyond the reasonable control of the affected party, and is agreed to include without limitation monetary, trade, health and other types of governmental regulations or actions; natural disasters; epidemics or other public health crises; vandalism, terrorism, or civil disorder; international conflicts; significant operational disruptions (e.g. fire, flood, machinery breakdown, delivery delays or delivery failures by suppliers including internal suppliers of the affected party’s own group, shortages of labor, energy or raw materials, strikes, lock-outs, disruptions in the packaging and handling process, difficulties in procuring means of transport); and major traffic disruptions. Events of force majeure must be notified to the other party without unreasonable delay. If delivery or acceptance is delayed by more than three months as a result of such events, each of the parties shall be entitled to withdraw from the Sales Contract with regard to the quantity affected by the disruption in delivery or acceptance, to the exclusion of all further claims.

5. Transfer of Risk. In the absence of any terms to the contrary in the Sales Contract, the responsibility and risk of loss shall transfer to the Buyer when the shipment is transferred to the first transport operator or when the goods are made available for collection by the Buyer. This principle shall apply even if the Buyer refuses to take delivery of the shipment.

6. Reservation of Property Rights.

- a) CABB shall retain title to the goods until CABB has received full payment of all claims existing or still arising from the business relations with the Buyer. Any machining or processing of the goods subject to reservation of title shall be carried out on our instructions. If the Buyer processes or combines the said goods together with other goods not owned by CABB, CABB shall acquire co-ownership of the new product, our proportionate share being equivalent to the invoice value of the goods subject to reservation of title relative to that of the other processed goods at the time of processing. To the extent that the Buyer acquires sole ownership through processing, combining or mixing, Buyer hereby does transfer to CABB co-ownership proportionate to the value of the goods subject to reservation of title relative to that of the other goods at the time that they are processed, combined or mixed.

In these instances the Buyer shall hold in safe custody and free of charge the item that is likewise owned or co-owned by us and deemed to be subject to reservation of title within the meaning of this section 6.

- b) To safeguard CABB’s total receivables resulting from the business relations, the Buyer hereby assigns to CABB such proceeds or receivables from resale as are equivalent to the value of the goods subject to reservation of title. We hereby accept such assignment.
- c) The Buyer may not resell goods subject to reservation of title unless the proceeds are assigned to us. At our request, the Buyer shall notify the third-party purchaser of same.
- d) If the value of our total collateral exceeds the amount owed by the Buyer by twenty per cent, we shall, at the request of the Buyer or any third party adversely affected by the excessive holding of Buyer’s collaterals, release collateral of our choice to the extent of the excess.
- e) **THE BUYER HEREBY ASSUMES ALL RISK FOR THE GOODS SUPPLIED BY US SUBJECT TO RESERVATION OF TITLE AND INDEMNIFIES CABB AS TO SAME, PER SECTION 11 HEREOF.** Buyer shall keep such goods in safe custody and insure them adequately against all loss. The Buyer hereby assigns to CABB the right to claim against the insurance in the event of loss for a priority share equivalent to all amounts owed by Buyer to CABB in connection with such goods.
- f) In the event of a third party laying claim to the goods subject to reservation of title, in particular in cases of seizure, the Buyer shall promptly alert such third party to CABB’s ownership of the goods and shall inform us immediately, thus enabling CABB to pursue our rights of ownership. The Buyer shall be liable to CABB for any expenses reasonably incurred by CABB in defending or perfecting its reservation of title as against any third party.

7. Warranty; Inspection; and Acceptance.

- a) CABB warrants that at the time of delivery the goods shall be representative of CABB’s commercial grade of goods in all material respects, or, if previously provided by CABB in a commitment

in writing, in material conformance with CABB’s stated specifications. **THE FOREGOING WARRANTY IS EXCLUSIVE OF ALL OTHER WARRANTIES, AND CABB DOES NOT MAKE AND EXPRESSLY DISCLAIMS, AND BUYER HEREBY WAIVES, ANY OTHER WARRANTIES (INCLUDING THOSE OF MERCHANTABILITY AND FITNESS, WHETHER EXPRESS OR IMPLIED BY COMMUNICATIONS, BY COURSE OR DEALING, OR OTHERWISE).**

- b) If Buyer fails to take delivery or give CABB adequate delivery instructions at the time stated for delivery (except for reasons of force majeure in accordance with Section 4 hereof), then Seller may: store the Products until actual delivery and charge Buyer for the reasonable costs and insurance; or sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to Buyer for any proceeds in excess over the price under the Sales Contract or charge Buyer for any shortfall.
- c) Buyer shall promptly inspect the goods. CABB must be notified of any obvious defects within two weeks of delivery, and of concealed defects immediately upon their discovery. Damage to packaging must be noted in the freight papers or notification made in writing to the delivering forwarder and to us at the latest six days after delivery.
- d) CABB will remedy properly notified defects at our discretion, taking the Buyer’s interests into consideration, by either eliminating such defects or supplying defect-free replacement goods. If such measures do not succeed in making the Buyer whole, the Buyer retains applicable statutory remedies.
- e) Defective goods may only be returned with CABB’s express written agreement. In the case of justified claims CABB shall refund the reasonable cost for the return shipment.
- f) **The period of limitation for bringing any claim of defect is twelve months, calculated from the transfer of risk, unless the defect is fraudulently concealed by us.**

8. Limitation of Liability.

- a) **CABB’s liability for damages, regardless of the legal basis, whether for unexcused delay, defective delivery, other breach of contract, alleged bad faith, or other claims, is limited in accordance with this section 8. CABB shall not be liable in the case of simple negligence by any CABB personnel or representative except to the extent that such negligence amounts to a material breach of a Material Contractual Obligation of CABB. A “Material Contractual Obligation” shall mean and be limited to the obligation to deliver in a timely manner, the conformity of the supplied goods with the agreed quality, and any advisory, protective, and due care obligations that CABB may have to facilitate the Buyer’s safe use of the supplied goods, the protection of life or health of the Buyer’s personnel, or the protection of Buyer’s property from material damage.**
- b) Where CABB is liable in accordance with and on the grounds set forth in Section 8.a), such liability shall be limited to damages that CABB would reasonably be expected to foresee, exercising due care and attention at the time of the conclusion of the Sales Contract, as an expected consequence of such a breach. Indirect damages and consequential damages resulting from defects in the supplied goods shall only be compensated to the extent they are typically to be expected in the course of a proper use of the supplied goods.
- c) **In the event of a delivery delay on our part due to our simple negligence, the amount of default damages which the Buyer may claim shall be limited to a maximum of five per cent of the agreed net purchase price for each complete week of delivery delay and in total to a maximum total of twenty per cent of the agreed net purchase price.**
- e) To the extent that we provide technical information or act in a consulting capacity and such information or consulting is not included in the contractually agreed scope of supply owed by us and separately invoiced as such, such work shall be free of charge and Buyer expressly excluded and waives all liability of CABB arising in connection therewith.
- f) The aforementioned exclusions and limitations on liability shall apply to the same extent for the benefit of our directors, managers, representatives, employees or other agents.
- g) The limitations set out in this section 8 shall not apply to CABB’s liability for wilful misconduct, or for acts or liabilities that are not waivable under applicable law.
- h) If the Buyer sells the supplied goods unchanged or after processing, transforming, combining or mixing with other goods, the Buyer shall release us internally from all product liability claims by third parties, to the extent that the Buyer is responsible for the circumstances giving rise to the liability.

9. Limitation Period; Expiration and Waiver of Claims. The period of limitation for all claims, excepting those subject to the period of limitation based on defect which shall be twelve months, shall be eighteen months.

10. Trademarks. Trademarks may be used in connection with products manufactured by the Buyer only with the trademark owner’s express written consent.

11. Safety; Indemnification from Buyer. To the extent that our goods are subject to regulations on dangerous substances, the Buyer shall, when storing and processing such goods, observe our product-specific safety data sheet and/or, when reselling the goods, pass on the relevant data to the purchaser. We will supply current safety data sheets upon request. To the extent that goods supplied by us are categorised as dangerous goods, they may be stored and (further) transported only in the packaging and by the means of transport approved for the purpose and with the prescribed labelling. Buyer represents that: it is aware as to the hazards that may be associated with the handling and use of the Products; and that (ii) Buyer will take all appropriate steps to inform its employees, contractors, agents, and/or customers as to such hazards, and that (iii) Buyer is familiar with all relevant regulations, accepted industry practices, and prudent procedures for the safe handling and use of the Products. Buyer shall comply with all applicable legal requirements and industry safety standards relevant to its activities in connection with the Products, including all safety and environmental standards, and all U.S. export controls and sanctions. **BUYER WILL AND DOES HEREBY INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER, ITS PARENT, AFFILIATES, AND SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (“SELLER INDEMNITEES”) FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, LIABILITY, OR EXPENSE, INCLUDING DAMAGES, FINES, COSTS, AND ATTORNEYS’ FEES INCIDENT THERETO, (COLLECTIVELY, “THIRD-PARTY CLAIMS”) FOR (I) PERSONAL INJURY OR DEATH OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, BUYER’S EMPLOYEES); OR (II) DAMAGE TO REAL OR PERSONAL PROPERTY THAT ARISES OUT OF, IS CONNECTED WITH, OR RELATES IN ANY WAY TO THE PRODUCTS (INCLUDING, WITHOUT LIMITATION, RECEIPT, POSSESSION, USE, HANDLING, STORAGE, PROCESSING, DISPOSAL, RESELL, AND/OR RETRANSFER OF THE PRODUCTS) AFTER DELIVERY OF THE PRODUCTS TO BUYER.**

12. Miscellaneous.

- a) The Buyer may not assign in whole or in part claims arising out of a contract concluded with us without our express written consent.
- b) If any clause in these Terms and / or a Sales Contract should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions of these conditions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent, time, place and scope. The aforesaid shall apply mutatis mutandis to any gap in these Terms and / or the respective Sales Contracts.
- c) Unless any written agreement has been made to the contrary, the Sales Contract is subject to the laws of the State of North Carolina, without giving effect to its rules on conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- d) **In connection with all disputes relating to the Sales Contract, the Buyer hereby submits to the exclusive jurisdiction of the state and federal courts of Mecklenburg County, North Carolina, the location of CABB’s headquarters, which Buyer acknowledges to be a reasonably prudent venue, bearing a reasonable relationship to the Sales Contract.** This exclusive jurisdiction and venue shall also apply to legal proceedings relating to documents, bills of exchange and checks.
- e) The contractual language shall be English. Where interpretation is required, the English text shall solely be authoritative. Any translations into foreign languages shall be for information purposes only.