

## PPC USA Inc. Terms & Conditions of Sale

**1. AGREEMENT.** The contract of sale ("Contract") resulting from documentation on the reverse side or attached hereto, together with Purchaser's Order (defined below) and these Terms and Conditions of Sale ("T&Cs"), constitutes the entire agreement between the parties hereto, except as modified in writing signed by both the Seller and Purchaser. The Seller is PPC USA Inc. and the Purchaser is identified in the Contract. Any material terms in the Order which are either different from or additional to Seller's T&Cs, are objected to and excluded unless Seller expressly agrees in writing to such terms. Execution of documentation by Seller to accommodate Purchaser's procedures or to evidence agreed upon change orders shall not be construed as assent to Purchaser's terms. Any representatives, warranties or statements made by any employee, sales person or agent of Seller not expressed in the Contract are not part of the Contract and shall not be binding on Seller. Acceptance of the goods shipped shall constitute assent to Seller's T&Cs.

**2. ACCEPTANCE AND APPROVAL OF ORDER.** Any proposal or quotation from Seller incorporate these T&Cs and shall constitute Seller's offer to sell, and shall provide the basis for an order from Purchaser accepting Seller's offer, including the T&Cs, for a specific quantity of goods. Purchaser's acceptance of Seller's offer is limited to Purchaser's assent to the Contract, and Seller objects to any additional or different terms in any order, P.O. or change order of Purchaser ("Order"). Seller's acceptance of Purchaser's Order is conditioned upon Purchaser's assent to any additional or different terms in the Contract. Without limitation, Purchaser's initials or signature on the Quotation or Acknowledgment, any use or acceptance of delivery of any goods, or payment of all or part of any invoice constitutes Purchaser's assent. Unless Purchaser and Seller have a current, unitary, mutually executed agreement for the purchase of goods that are the subject of the Order (e.g., a Master Supply Agreement), only the Contract applies to the Order and any other terms and conditions proffered by Purchaser are rejected and do not form a part of the Agreement. Any delay or failure by Seller to object to any terms or conditions received from Purchaser, including the original Order, will not be a waiver of any Contract term. The minimum order is \$1000.00. Partial orders are subject to price review. Order quantities MUST be in even standard package quantities. In the event an Order does not meet the standard pallet size, Seller will revise pricing to reflect (1) an increase in Order quantity to the next largest standard pallet quantity, or (2) assess a re-packaging fee of \$100.

**3. CREDIT.** Seller may, but shall not be obligated to, grant credit terms to Purchaser. Acceptance or fulfillment of any Order is subject to final credit approval by Seller. Credit terms of payment must have the approval of Seller's Credit Department and must be specified in writing on Seller's invoice or in the Contract. If Purchaser's credit is found by Seller to be unsatisfactory, Seller may rescind or terminate the Contract. If at any time during the term of the Contract, Purchaser's financial responsibility becomes impaired or unsatisfactory to Seller, Seller reserves the right to stop shipment on notification to Purchaser, demand payment in advance or at time of delivery for future deliveries, or require other security satisfactory to Seller and in the absence thereof, to terminate the unfilled portion of the Contract. Seller will notify Purchaser promptly of its decision to stop shipments and give an advance notice to the extent commercially feasible. Seller shall not be liable for any resulting direct or indirect damages or expenses of Customer. In the absence of credit terms, sales are for cash.

**4. PAYMENT.** Default unless otherwise stated is Net 30 days in U.S. dollars. Purchaser agrees to make payment at Seller's location specified in the Contract in lawful money of the United States. Purchaser further agrees to make all payments when due to Seller in accordance with the agreed terms of payment in the Contract with no right of retention or set-off. Purchaser agrees to pay an administrative late fee of 1.5% per month (or, to the extent permitted by law if less) on all delinquent balances if and when assessed by Seller, and any attorney's fees and court costs arising out of and made necessary to enforce Purchaser's obligations to Seller under the Contract.

**5. TAXES.** Seller does not collect taxes. Any federal, state or local tax, assessment, fee, duty or charge hereafter imposed on or measured by the products purchased hereunder shall be Purchaser's sole responsibility and for its account, unless Purchaser furnishes Seller an acceptable exemption certificate from such tax, fee, duty or charge prior to shipment. Purchaser agrees to defend and immediately indemnify and hold harmless Seller for any applicable taxes, assessments, fees, duties or other similar charges.

**6. DELIVERY; DELAYS; FORCE MAJEURE.** Seller may ship the entire Order in a single shipment or in its discretion in multiple shipments from time to time on one or more vehicles or vessels within the time of shipment and/or loading specified in the quotation, acknowledgment, Order, or invoice, and, in Seller's discretion, each such shipment shall be considered as a separate contract; and the default as to one or more such contracts shall not affect the remaining contracts. Seller may deliver any goods before the scheduled delivery date. All accepted Orders are subject to Seller's ability to make delivery at the time and in the quantities specified, and Seller shall not be liable for damages for failure to make partial or complete shipment or for any delay in making shipments. Purchaser shall be liable for any added expenses incurred by Seller because of Purchaser's delay in furnishing requested information to Seller, delay resulting from order changes by Purchaser, or delay in unloading shipments at delivery point. Seller shall make delivery in accordance with the terms of the Contract or within a reasonable time in the absence of any specific commitment, but Seller shall not be liable for delays or defaults in delivery caused by floods, fires, storms, or other acts of God, by war or act of public enemy (or civil disturbance), strikes, lockouts, shortages or labor or raw materials

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and supplies (including fuel) or production facilities, transportation service or equipment shortages or failures, threatened or actual acts of terrorism, action of any government authority or other conditions beyond Seller's reasonable control.

**7. CANCELLATION.** Order cancellations and/or deferrals will be subject to a minimum 25% charge of original order value placed on Seller. Cancellation of Special Order/Non-Stock items not permitted.

**8. CHANGE.** If Purchaser desires to change any portion of the Contract, it must make such request in writing to Seller. Seller may, in its sole discretion, accept or reject any such request. Prices and delivery schedule are subject to change. If accepted, the Purchaser nonetheless must take delivery and make payment to Seller for all material manufactured and in stock or in process of manufacture at time of notice, and all special materials ordered at time of notice and for which Seller must take delivery, unless otherwise agreed by Seller in writing. All such materials must be removed from Seller's premises within 30 days after payment and payment will be due at time of notice. Changes to Special Order/Non-Stock items are subject to receipt of a new Order from Purchaser, and Seller's written consent thereto, and shall be subject to price revision by Seller.

**9. INSPECTION AND TESTING.** Seller's standard specifications and tests apply to all orders. All charges for inspections or tests not regularly furnished are for Purchaser's account. Any inspection by Purchaser of Equipment on Seller's premises shall be scheduled in advance to be performed during normal working hours. If the order provides for factory acceptance testing, Seller shall notify Purchaser when Seller will conduct such testing prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and its authorization for shipment. Goods not subject to factory inspection are deemed to be accepted by Purchaser unless Purchaser provides Seller written notice to the contrary specifying the non-conformance within twenty-four (24) hours of delivery. Thereafter, Purchaser will be deemed to have waived any right to reject the goods. Purchaser's acceptance is irrevocable. Seller may examine on Purchaser's premises goods that Purchaser claims are nonconforming. Seller may impose charges to reimburse it for its costs if it finds Purchaser's claim is unsupported or for rescreening conforming goods. No goods may be returned to Seller unless Customer has first received Seller's return material authorization number and complied with Seller's instructions. Seller reserves the right to modify its process, materials, and specifications for goods, and to substitute goods substantially equivalent to those ordered or manufactured to the modified specifications. Purchaser is solely responsible for testing all goods to determine suitability for its needs.

**10. PRICES.** Prices are subject to change without notice and include customs duties and other importation or exportation fees, if any, at the rates in effect on the date of Seller's proposal. Any change after that date in such duties, fees, or rates, shall result in a price revision to the price from Seller due to such additional costs. Orders based on published prices and accepted for scheduled shipment will be invoiced at Seller's applicable price in effect on the scheduled date of shipment, unless otherwise specifically noted on Seller's order acknowledgement. All prices will be in accordance with applicable government regulations. Orders requiring special packaging may be assessed additional charges. Orders received in less than pallet quantity are subject to additional charges. Unless otherwise specified in writing, all proposals expire thirty (30) days from the date thereof.

**11. SHIPMENT.** Seller will select method of shipment and routing when transportation charges are for account of Seller. When shipping instructions are specified by the Purchaser, all costs in excess of the most economical method of transportation will be for the account of the Purchaser. The foregoing includes, but is not limited to, carrier's charges for notification prior to delivery, demurrage, and delay in unloading, diversion, or re-consignment. If purchaser needs a flatbed, the cost difference between regular truck and flatbed will be charged to the Purchaser, documentation of the difference will be available upon request.

**12. FREIGHT ALLOWANCE.** Freight terms are based on regular, enclosed truck to single destination, unless otherwise stated. If flatbed truck is required, additional charges will apply if order is freight allowed. Same applies for shipments during weekends, nights, expedite and/or air shipments. Seller's freight allowance is \$12,000.00 or more per order shipment release to one destination for EASTERN STATES (1), \$10,000.00 or more per order shipment release to one destination for CENTRAL STATES (2), \$15,000.00 or more per order shipment release to one destination for WESTERN STATES (3). For orders to Alaska, Hawaii or Puerto Rico that meet freight allowance requirements freight will be paid to a selected region Port of Exit. The above policy applies to standard dry van/truck ground transit only. The freight allowance terms are "FOB Origin, Freight Prepaid." In the event the freight thresholds are not met, the terms will either be "FOB Origin, Freight Prepaid and Billed" or "FOB Origin, Freight Collect."

(1) AR, AL, CT, DE, FL, GA, IN, KY, LA, MA, MD, ME, MI, MS, ME, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WV and Puerto Rico

(2) IL, KS, MN, MO, ND, NE, OK, SD, TX, WI

(3) AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY

**13. TITLE.** Title to products transfers to Purchaser upon delivery to carrier at the FOB point of shipment which will be clearly set forth in the shipment terms of the Contract. On receipt of title, Purchaser is then responsible for proper protection of product, placement and compliance

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with all regulations and ordinances, and will indemnify Seller against all claims including reasonable attorney's fees for personal injuries or property damage arising from the storage, use or handling of such products.

**14. IN TRANSIT CLAIMS.** Claims for damage or shortage in transit must be made against the carrier by the owner of the shipment according to the FOB terms of the Contract. Purchaser has the responsibility to inspect shipments before or during unloading to identify any such damage or shortage and see that appropriate notation is made on the delivery tickets or an inspection report furnished by the local agent of the carrier in order to support a claim.

**15. CLAIMS.** Notice of claims against Seller hereunder for any reason, must be made to Seller in writing within 30 calendar days after discovery and within any applicable warranty period. Failure to give such notice to Seller shall constitute a waiver by Purchaser of any right later to assert such claim.

**16. RETURNS.** All requests for returned goods must first be approved in writing, by the appropriate Regional Manager/Managing Director of Seller. After written approval, returned goods shall be accepted for credit only if in saleable condition and only with evidence of Seller's prior written consent and proof of purchase within one year of the original ship date from Seller. Product must be in original packaging and be in standard pallet quantities. Special items of other than normal and standard design regularly sold by Seller cannot be returned. Seller will assess a minimum 25% restocking charge, if applicable. Delivery costs to and from the Purchaser that were paid by Seller will be deducted along with all loading and unloading costs and any costs of repair. Purchaser is responsible for cost of return freight.

**17. WARRANTY; DISCLAIMER; EXCLUSIVE REMEDY; LIMITATION OF LIABILITY.** Seller warrants title to each individual product sold under the Contract and further warrants for a period of one (1) year after shipment, but only to the extent and limit of the purchase price paid for such individual product, that such product conforms to the specifications set forth in the Contract and is free from defects in material and workmanship under normal service and use for which it was designed. Seller's sole obligation and Purchaser's exclusive remedy under this warranty shall be limited to one of the following, as selected by Seller: delivering to Purchaser a replacement for any product part thereof determined by Seller to be defective; repairing such product or part; or refunding the purchase price (or an equitable portion thereof) paid for such product or part by Purchaser. Purchaser must notify Seller within 30 calendar days of discovery and within the warranty period of any claim under this warranty. Seller's warranty extends only to the first purchaser of a product from Seller or Seller's authorized distributor. All goods not manufactured by Seller are warranted only to the extent of the warranties of the original manufacturer. EXCEPT ONLY AS EXPRESSLY STATED IN THIS SECTION, ALL GOODS ARE SOLD WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CAPACITY, TITLE, NON-INFRINGEMENT, ANY WARRANTIES ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE, AND EXPRESS WARRANTIES BY REPRESENTATION, DESCRIPTION, OR OTHER AFFIRMATION OF FACT, SAMPLE, OR ILLUSTRATION, WHETHER ORAL, WRITTEN OR GRAPHIC. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF SUCH GOODS IS WITH PURCHASER. SELLER DOES NOT WARRANT THE PERFORMANCE OR RESULTS OF USING ANY GOODS. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, NEITHER SELLER, NOR ITS SUPPLIERS, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, REPRESENTATIVES, OR EMPLOYEES SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT WHETHER IN CONTRACT, REPRESENTATION, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), STRICT LIABILITY, INDEMNITY OR OTHERWISE FOR: (A) ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGE, LOSS, COST OR EXPENSE; OR (B) ANY LOSS OF (I) PRODUCTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS, (II) CAPITAL, (III) REVENUES, (IV) PROFIT, (V) CONTRACTS, (VI) BUSINESS, (VII) GOODWILL, OR (VIII) ANTICIPATED SAVINGS; (C) COSTS OF REWORK, WASTED EXPENSES OR WASTED TIME; (D) ANY MATTER BEYOND SELLER'S REASONABLE CONTROL; OR (E) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE AMOUNTS PAID BY PURCHASER FOR THE GOODS UNDER THE CONTRACT, IN EACH CASE, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, THE ABOVE LIMITATIONS SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS AND EXCLUSIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF THE GOODS, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS, SERVICES, OR SUBSTANCES. ANY ACTION BY CUSTOMER ARISING OUT OF THIS AGREEMENT MUST BE COMMENCED WITHIN TWO YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.

**18. REMEDIES.** All remedies available to Seller shall be cumulative and may be exercised separately or concurrently without waiver of any other remedies.

**19. INDEMNIFICATION.** Purchaser agrees to indemnify, defend and hold harmless Seller and its directors, officers, employees, agents, assigns, and successors from and against any and all liabilities, demands, or claims, actions, settlements, losses, damages, penalties, obligations, judgments and expenses, including attorneys' and experts' fees and expenses, incurred or suffered by Seller or any such person

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arising out of the sale to, use of, or transfer to a third party by, Purchaser of any products. This indemnification obligation shall apply even in the event of the fault, negligence or strict liability of Seller. This indemnification shall survive delivery of any such products to Purchaser and any subsequent transfer to a third party. Seller agrees to defend and indemnify Purchaser against any claims, suits, judgments, and legal actions or other legal proceedings by a third party for patent infringement in connection with the manufacture of Seller's products sold to Purchaser ("Infringement Action"); provided, that Purchaser shall notify Seller within 30 calendar days of any such Infringement Action with complete information, shall cooperate with Seller in the defense of the Infringement Action; and shall allow Seller to control such defense, including but not limited to selection of defense counsel, and any settlement. Seller shall have no obligations hereunder if Purchaser; (i) has modified the subject goods and the alleged infringement arises out of such modification; or (ii) has utilized the goods other than for their intended purpose. In no event shall Seller be liable for any consequential, special, or incidental damages related to any Infringement Action.

**20. ASSIGNMENT; BINDING NATURE.** Neither the Contract nor any right or obligation hereunder may be assigned, transferred, delegated, pledged or encumbered by Purchaser ("Assignment") without the prior written consent of Seller in its discretion. Any purported Assignment without such consent will be null and void *ab initio*. For purposes of the preceding sentence, a change in control of Purchaser shall constitute an Assignment requiring Seller's prior written consent; for this purpose, a "change in control" means a transfer, on a cumulative basis, of shares, voting rights or ownership interests which will result in a change in the identity of the person or persons exercising, or who may exercise, effective control of Purchaser. Unless Seller expressly agrees in writing otherwise, no assignment by Purchaser shall release it from its obligations hereunder. Seller may freely assign its rights and duties hereunder. The Contract shall be binding upon and inure to the benefit of the permitted successors and assigns (whether by operation of law, merger, change of control or otherwise) of the parties hereto.

**21. SEVERABILITY.** If any provision of the Contract is determined to be illegal or unenforceable, it shall be disregarded and not affect the enforceability of any other provision of the Contract.

**22. GOVERNMENTAL REGULATIONS.** Seller warrants that no code, law, regulation, or ordinance of the United States, a state or any other governmental authority or agency of any applicable Executive Order has been violated in the manufacture or sale of the items covered by the Contract and warrants that the equipment, supplies and/or articles covered thereby conform to all such requirements.

**23. LAWS.** The Contract shall be governed by and shall be construed by the law of the State of Texas without regard to its choice of law rules, and any disputes arising hereunder will be heard exclusively by a court of competent jurisdiction in Harris County, Texas.

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