

TERMS AND CONDITIONS

SCOPE. The terms and conditions of sale contained herein (the "Terms and Conditions") apply to all quotations made and contracts of sale entered into by Bishamon Industries Corporation, a California corporation ("Bishamon"). If these Terms and Conditions conflict with other terms and conditions, if any, specified by Buyer in Buyer's order form or otherwise, Bishamon's acceptance of Buyer's order is on condition that only these Terms and Conditions shall apply to Buyer's order, irrespective of whether the Buyer accepts these Terms and Conditions by a written acknowledgement, by implication, or by acceptance of and/or payment for goods ordered hereunder. Any term, provision or condition in conflict with, or in addition to or in modification of, any of these Terms and Conditions shall not be binding upon Bishamon unless such term, provision or condition is in writing and signed by an officer of Bishamon. Bishamon's failure to object to any term or condition contained in any communication from Buyer shall not be deemed a waiver of these Terms and Conditions. All offers, orders, agreements, and contracts must be approved and accepted by Bishamon at its home office

MODIFICATIONS. No addition to, deletion from or modification of any of the provisions of the Terms and Conditions of this order shall be binding upon Bishamon unless acknowledged and accepted by Bishamon in writing. Any change made by Bishamon will be deemed accepted by Buyer unless within ten (10) days from notice of such change Buyer notifies Bishamon of Buyer's exception to such change. A waiver by Bishamon of any default or of any of the Terms and Conditions of Sale shall not be deemed to be a continuing waiver or a waiver of any other default or of any other of these Terms and Conditions of Sale, but shall apply solely to the instance to which the waiver is directed.

TITLE AND DELIVERY. (a) Unless otherwise expressly provided herein, title passes to Buyer when the products ordered hereunder are delivered to the carrier F.O.B. point of shipment. In all cases, risk of loss or damage to any such product in transit shall fall upon Buyer, whose responsibility it shall be to file claims with the carrier, which shall be deemed Buyer's agent. Bishamon accepts no responsibility and shall not be responsible for such claims filed with it. Unless Bishamon receives specific shipping instructions from Buyer, Bishamon will exercise its own discretion in selecting the method of shipment. (b) Bishamon shall not be liable for delay in delivery or non-delivery due to causes beyond Bishamon's reasonable control, including but not limited to, acts of God, acts of Buyer, acts of civil or military authority, war, riots, fires, floods, strikes, lockouts, delays in transportation, and inability to obtain necessary fuel, power, labor, materials, or manufacturing facilities. In the event of any such delay the date of delivery shall automatically be extended for a period equal to the time slot by reason of such delay. (c) In no event shall Bishamon be in default for failure to deliver unless Bishamon does not commence to cure such failure within ten (10) days after receipt from Buyer of written notice (by certified mail) of failure to deliver.

TAXES. Unless otherwise expressly indicated herein, all prices are exclusive of all taxes, including, but not limited to federal, state and local excise, sales, use and similar taxes. Such taxes, when applicable to this sale or to the products sold, will appear as separate additional items on the invoice, or in lieu thereof the Buyer, prior to delivery, shall provide Bishamon with a properly executed tax exemption certificate acceptable to the appropriate taxing authorities.

BUYER'S REMEDIES. In the event that the goods are defective, Buyer's sole claim against Bishamon shall be for repair or replacement as provided in the Warranty Statement accompanying shipment of Bishamon Products.

IN NO EVENT WILL BISHAMON BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY. DAMAGES THAT BISHAMON WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO: LOSS OF PROFITS; LOSS OF SAVINGS OR REVENUE; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES, INCLUDING CUSTOMERS; AND INJURY TO PROPERTY, AND WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

PAYMENT AND PRICES. (a) Unless otherwise agreed upon by Bishamon in writing, payment terms for goods are net 30. If deliveries are made in installments, each installment shall be separately invoiced and paid for when due without regard to other deliveries. All payments shall be in U.S. funds. Late fee, interest, and/or finance charges, up to the maximum rate permitted by law, may be added to any overdue amounts owed to Bishamon. (b) If in the judgment of Bishamon, the financial condition of Buyer at any time does not justify continuance of delivery on the terms of payment above specified, Bishamon may require full or partial payment in advance. If Buyer becomes insolvent, or bankruptcy or other debtor's relief proceedings are instituted by or against Buyer, or Buyer makes an assignment for the benefit of its creditors or is unable to meet its obligations as they come due, any such event shall be deemed a material default hereunder, entitling Bishamon to cease performance under this order and to avail itself of all legal and equitable remedies it may have against Buyer.

SHORTAGES: DEFECTIVE OR INCORRECT PRODUCTS. All claims for shortages or incorrect products must be filed by Buyer with Bishamon within 10 days of the receipt of the products.

DEFAULTS. In the event of any default by Buyer, Bishamon may decline to make further shipments without in any way affecting its rights under this order. If despite any default by Buyer, Bishamon elects to continue to make shipments, Bishamon's action shall not constitute a waiver of any default by Buyer or in any way affect Bishamon's legal remedies of any such default. Default shall include, but not be limited to, the Buyer's failure to make timely payments. In the event of a default, Buyer shall be responsible for all costs of collection including reasonable attorneys' fees.

CONTROLLING LAW. The validity, construction, and performance of these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the State of California. In the event that any provision of these Terms and Conditions or the application of any such provision shall be held by a court of law to be contrary to law, the remaining provisions of these Terms and Conditions of Sale shall remain in full force and effect. Any action or proceeding commenced by any party hereto pertaining to an alleged breach or default hereunder, to construe any term, covenant or provision hereof, or with respect to any matter or claim arising under this these Terms and Conditions shall be brought solely in any court of competent jurisdiction within the County of San Bernardino, California, and the parties hereto agree to submit to the personal jurisdiction of any such court.