

SPS CLEANTECH, LLC

STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions (the “Terms”) apply to each sale made by SPS CleanTech, LLC (hereinafter “Vendor”). The Terms supersede any and all terms presented by Customer, either orally or in writing, and any terms contained in a Purchase Order submitted by Customer to Vendor. For the avoidance of doubt, any terms and conditions presented by Customer shall be null and void and of no force or effect. Customer’s submission of a Purchase Order to Vendor represents Customer’s agreement to the Terms set forth below.

1. **Prices**

All Quotes are valid for 30 days. All prices are subject to change without prior notice to Customer. Pricing excludes applicable taxes, shipping, customs costs unless noted otherwise.

2. **Written Confirmation**

A written Purchase Order is required from Customer. Vendor shall be under no obligation whatsoever to accept any order. Any acceptance by Vendor is expressly conditioned upon Customer’s acceptance of these Terms.

3. **Payment Terms**

The payment obligation for Customers that have obtained a pre-approved credit account is Net 30 days after invoice date. All other Customers will have a payment obligation of Cash before Delivery in the form of a major credit card or Automated Clearing House (ACH). In the event of any default of Customer or in the event of Customer’s failure to make any payments described herein, Vendor may decline to make further shipments without in any way affecting its rights hereunder. If, despite any default or failure to make payments by Customer, Vendor elects to continue to make shipments of Products, Vendor’s action shall not constitute a waiver of any default by Customer or in any way affect Vendor’s legal remedies for such default.

4. **Cancellation**

Cancellations will not be accepted by Vendor once Product ships. Any custom components or assemblies ordered or fabricated solely for Customer are noncancellable.

5. **Shipping**

All Sales are shipped using standard packaging. Shipping terms are FOB Origin, Prepaid & Add using common carrier unless advised otherwise. Ownership of the Product transfers to Customer once the shipping vehicle leaves the shipping dock. Vendor is not responsible for delays, loss or damages in transit. Freight claims, if any, are solely the responsibility of Customer.

6. **Returns**

Customer shall not return Products without Vendor’s prior written consent and receipt of a Return Authorization Number (RMA) number. Custom components or assemblies ordered or fabricated solely for Customer are nonreturnable. All approved returns must be in original packaging, not used and shipped to Vendor freight prepaid. All returns will be inspected by Vendor and credit applied only if the above terms are met. A restocking fee will apply based on the Product and invoice value.

7. **Claims**

It is the responsibility of Customer to inspect the Product prior to use. Vendor will not accept a claim for manufacturing defects if the Product has been installed with visible defects. No claim will be considered by Vendor if it is a result of improper installation or handling or if submitted after the Product warranty has expired.

8. **Risk of Loss; Insurance**

Customer assumes all risk of loss upon delivery of the Product and other components into the possession of the carrier (regardless of who chooses the carrier) that delivers the Product to Customer from the manufacturer or from Vendor’s place of business, whereupon Customer’s obligation to provide insurance will commence. Customer shall indemnify Vendor against any and all loss or damage of or to the delivered Product and other components of the Product until ownership vests in the Customer except where the loss or damage is caused solely by the negligence of Vendor, its agents or employees.

9. **Limitation of Liability**

In no event shall Vendor or its officers, directors, employees, agents, assigns or affiliates be liable for indirect, incidental, consequential or special damages, including but not limited to loss of use or anticipated profits, whether in an action in contract or tort, even though Vendor may have been advised of the possibility of such losses. In no event shall Vendor’s liability either under these Terms or otherwise exceed the actual cost of damages or Fifty Thousand Dollars (\$50,000.00), whichever amount is less. Vendor’s obligation with respect to the Product is limited exclusively to shipment of the Product.

10. **Warranty**

Vendor warrants that Products shall be shipped free from defects in material and workmanship. Warranty period and terms will be in accordance with the standard published warranty applicable to each Product. Vendor’s obligation under this Warranty is limited, at Vendor’s option, to repairing or replacing Product or the refund of original cost. In no event will Vendor be responsible for damages of any kind whether incidental, consequential or otherwise (including without limitation, lost profits and removal, installation costs).

The foregoing warranties shall not apply to any Product or other components of the Product which have been:

- Used or operated in a manner inconsistent with the use intended by Vendor;
- Installed, modified, or repaired in a manner which adversely affects, in the sole discretion of Vendor, its operations or reliability;
- Damaged because of accident, neglect or misuse by anyone other than Vendor’s agents or employees or other causes other than ordinary use, in the sole discretion of Vendor.

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THE FOREGOING WARRANTIES APPLY ONLY TO THE ORIGINAL PURCHASER. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, VENDOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, CAPACITY, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE PRODUCT IN ANY RESPECT. NO IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE IS GIVEN BY VENDOR OR SHALL ARISE BY OR IN CONNECTION WITH THESE TERMS AND/OR VENDOR'S AND/OR CUSTOMER'S CONDUCT IN RELATION THERETO OR TO EACH OTHER, AND IN NO EVENT SHALL VENDOR BE LIABLE ON ANY SUCH WARRANTY WITH RESPECT TO THE PRODUCT OR ANY COMPONENT THEREOF. ANY MODEL, SAMPLE, DRAWING OR OTHER ARTIFACT, PERFORMANCE STANDARD, DESIGN SPECIFICATION OR REPRESENTATION OF ANY KIND OF THE PRODUCT FURNISHED TO CUSTOMER BY VENDOR, IF ANY, WAS FOR ILLUSTRATIVE PURPOSES EXCLUSIVELY AND NEITHER DID NOR DOES CONSTITUTE ANY REPRESENTATION OR WARRANTY OF VENDOR THAT THE PRODUCT WOULD OR WILL CONFORM THERETO.

11. Force Majeure

Vendor's obligation with respect to the Product and the work described in the Quote is limited exclusively to delivery of the Product. Vendor shall not be liable for delay or failure to carry out any of its obligations under these Terms where such delay or failure is caused by Customer, labor troubles, riots, insurrection, labor or material shortages, in-transit breakage, any act of God, fires, floods, weather, strikes, factory shutdowns, embargoes, wars, riots, terrorism, pandemic, epidemic, or shortages in goods or transportation.

12. Governing Law; Forum; Attorney's Fees

These Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to its choice of law rules. The federal or state courts of Pennsylvania will have exclusive jurisdiction to adjudicate any dispute under and/or concerning these Terms and the parties hereby consent to jurisdiction in these courts. The parties hereby agree that service of process by certified mail shall be acceptable and proper service. In the event of litigation arising under these Terms or the transactions contemplated herein, Vendor, if the prevailing party, shall be entitled to collect from Customer, in addition to any damages or other awards, reasonable attorneys' fees and litigation costs incurred in prosecuting or defending such litigation.

13. Survival; Severability

The indemnification, warranty, and governing law obligations set forth in these Terms shall survive the termination of these Terms by either party for any reason. If any provision of these Terms is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of these Terms shall continue in full force and effect.

14. Modification

The provisions of these Terms may not be modified, changed, amended or rescinded in any manner except by a written instrument signed by an authorized representative of Vendor and Customer.

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