

HMAX, LLC

GENERAL TERMS AND CONDITIONS OF SALE

- 1. The Agreement.** HMAX, LLC's (referred to herein as "HMAX") agreement to sell the products described in the Order Confirmation to the customer (the "Customer") is expressly conditioned upon Customer's agreement to all of these terms and conditions hereof. No additional or different terms and conditions will apply to any sale resulting from any order placed by Customer for the goods covered by this Order Confirmation and no such other terms or conditions shall be binding upon HMAX.
- 2. Delivery, Claims, and Delays.** Delivery of the products shall be made in material compliance with the schedule set forth in the applicable purchase order. Delivery of the products shall be F.O.B. shipping point, whereupon title and risk of loss of the products shall pass to Customer. Customer assumes all risks of and responsibility for loss or damage to, or delay in delivery of, any products after tender thereof to a common carrier or other shipper. Notwithstanding Section 2-510(1) of the Uniform Commercial Code, after delivery of the products to Customer, all risk of loss shall remain with Customer regardless of any breach of warranty or nonconformities in the products. Upon receipt of any delivery, Customer will note any damage to the packaging or products on the freight bill and give immediate notice of such damage to HMAX. Should there be any shipping discrepancies regarding the quantity or item received, Customer must notify HMAX within five (5) business days. Where HMAX agrees to ship product by prepaid freight, HMAX will ship via the carrier of its choice. Any special instructions for delivery must be communicated by Customer to HMAX in writing and agreed to by HMAX in writing. Additional delivery charges incurred to comply with Customer's special instructions for delivery will be Customer's responsibility. HMAX may deliver products in partial shipments. Where this is necessary, HMAX will make reasonable efforts to contact Customer to make mutually acceptable arrangements for the back-ordered products.
- 3. Taxes, Customs and Charges.** Customer shall pay for all sales, use, value-added and other taxes, levies, duties and tariffs, permit or license fees, or other governmental charges relating to or incurred in connection with HMAX's performance hereunder or imposed on the manufacture, storage, sale, transportation, import, export, delivery, or use of any products. Despite the foregoing, if HMAX is required to make any such payments due to Customer's failure to do so, Customer shall immediately reimburse HMAX in that amount, in addition to any penalties HMAX incurred due to Customer's failure to make timely payments.
- 4. Cancellation or Returns.** Any order may be cancelled by Customer within seven (7) days of the date of this Sales Acknowledgment. No products may be returned without a Returned Merchandise Authorization ("RMA") from HMAX. An RMA may be requested by calling 1-844-500-HMAX or e-mailing cs@hmax.com. All returns are to be freight pre-paid by Customer unless the return is due to an error by HMAX.
- 5. Payment.** The purchase price shall be paid in U.S. Dollars. Payment terms are net 30 days from the invoice date. Amounts due and not paid within 30 days from the invoice date are subject to interest charges at the rate of 1.5% per month) for each month or portion of a month until paid. Customer agrees to pay all of HMAX's reasonable attorney fees, collection fees and costs arising out of any breach by Customer of this or any subsequent agreement between Customer and HMAX. To secure payment of the purchase price, Customer hereby grants to HMAX a purchase money security interest in and to all products from time to time sold by HMAX to Customer.

6. Limited Warranties. Product warranties are provided solely by the manufacturer of the products, and HMAX will not extend or modify these warranties without written consent from the manufacturer and then only as provided in a writing signed by HMAX. THESE MANUFACTURER WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF HMAX OR THE MANUFACTURER, AND NEITHER HMAX NOR THE MANUFACTURER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE PRODUCTS.

7. Limitations of Liability.

(a) Notwithstanding anything to the contrary herein, the aggregate liability of HMAX, including without limitation for or with respect to HMAX affiliates, contractors, suppliers, employees, agents, or representatives, arising out of or in connection with the Order Confirmation, the sale of the products to Customer, or Customer's use or resale of the products, whether based on contract, strict liability, negligence or other tort, pollution, disease or otherwise shall not exceed an aggregate amount equal to 100% of the price actually paid by Customer to HMAX for the products giving rise to the claim.

(b) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, CONTINGENT OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER THE INDEMNIFYING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIMS ARISING OUT OF OR RELATED TO ANY PRODUCTS MUST BE BROUGHT BY WITHIN ONE (1) YEAR FROM THE DATE OF THE TENDER OF DELIVERY THEROF TO CUSTOMER. A PARTY'S FAILURE TO BRING ANY SUCH ACTION CONSTITUTES AN IRREVOCABLE WAIVER OF ANY AND ALL SUCH CLAIMS.

8. Indemnity. HMAX and Customer (each, an "indemnitor") agree to indemnify, defend, and hold the other (the "indemnitee") harmless against any and all third party losses, damages, and expenses (including without limitation attorney fees and other costs of litigation) that the indemnitee may incur as a result of any claim made against the indemnitee by any third party to the extent that such losses, damages or expenses arise out of the negligence or other wrongful conduct of the indemnitor.

9. Force Majeure. A "Force Majeure Event" shall mean any event, condition or circumstance which is beyond HMAX's reasonable control, including without limitation, acts of God, casualties, epidemics, civil disturbances, war, riots, sabotage, accidents, thefts, changes in law or other acts of governmental authorities, strikes, or other labor shortages or disturbances, unavailability or excessive cost of materials or products, or acts or omissions of Customer or its employees, (sub)contractors, or other persons for whom Customer may be responsible. HMAX shall be entitled to revise the delivery date of any products or to cancel Customer's accepted purchase order upon the occurrence of a Force Majeure Event without liability to Customer or any other person. HMAX shall be entitled to a purchase price increase upon the occurrence of a Force Majeure Event if its direct costs are increased as a result of such Force Majeure Event if HMAX is able to document such increase for Customer.

10. Severability. In case any provision hereof is held to be invalid, illegal or unenforceable, such provision shall be limited or excluded only to the extent necessary to make it valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions shall not be affected.

11. Assignment. The Order Confirmation may not be assigned by Customer without the prior written consent of HMAX. The Order Confirmation shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12. Law Governing. The Order Confirmation shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to the choice of law principles of the State of New York or of any other jurisdiction.

13. JURISDICTION AND VENUE. THE PARTIES AGREE THAT ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY, SHALL BE INSTITUTED IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, OR ANY COURT OF THE STATE OF NEW YORK LOCATED IN SUFFOLK COUNTY, AND EACH PARTY IRREVOCABLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THOSE COURTS AND WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION OR VENUE THAT ANY SUCH PARTY MAY HAVE UNDER THE LAWS OF THE STATE OF NEW YORK OR OTHERWISE.

14. WAIVER OF JURY TRIAL. THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT, ANY OTHER AGREEMENT RELATED HERETO OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

15. Headings. The headings contained in the Order Confirmation are for convenience of reference only, and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent, of the Order Confirmation or any provision hereof.

16. Miscellaneous. No provision of the Order Confirmation and no breach of any provision of the Order Confirmation shall be deemed waived by any previous waiver of that provision or any breach of that provision, by any previous custom, practice, or course of dealing, or by HMAX's failure to object to provisions contained in any communication or order from Customer. There are no oral representations, agreements or inducements pertaining to the transaction which are not contained herein. Neither of the parties hereto shall be bound by any conditions, warranties, understandings, or representations with respect to such subject matter other than as expressly provided herein. Each party shall pay the fees and expenses of its own attorneys. Any provision of the Order Confirmation prohibited or unenforceable under applicable law shall be ineffective only to such extent and without invalidating the remaining provisions of the Order Confirmation.