

Terms of Sale

Applicability: These terms and conditions apply to all sales of products by Arco, Inc. (Seller) and shall be deemed incorporated in any acceptance or acknowledgement by Seller of Buyer's purchase order and in any other contract for the sale of products by Seller (the 'Contract').

Payment: Any checks received by Seller are accepted subject to collection. The date of collection shall be deemed the date of payment. Any check received from Buyer may be applied by Seller against any obligation owing by Buyer to Seller, under the Contract or any other contract, regardless of any statement appearing on or referring to such check, without discharging Buyer's liability for any additional amounts owing by Buyer to Seller, and the acceptance by Seller of such check shall not constitute a waiver of any of Seller's rights, including the right to pursue the collection of any remaining balance. On any invoice not paid by maturity date, Buyer shall pay interest from maturity date to date of payment at the annual rate of 18% compounded annually (or such lower rate as may then be the maximum allowable by New Jersey law), together with the Seller's costs of collection (including reasonable attorney's fees). Buyer agrees to pay the entire net amount of each invoice rendered by Seller without offset or deduction. Prices for any undelivered Products may be increased by Seller in the event of any increase in the cost to the Seller, subject to cancellation by Buyer within 24 hours after notice of increased price.

Credit: Seller may, in its sole discretion, at any time and from time to time decline any or all requests to extend any credit (or additional credit) to Buyer, and may require pre-payment in cash before shipment of any products, and may withhold shipment until all such pre-payment is made. If Seller believes in good faith that Buyer's ability to make payments under the Contract is or may be impaired, Seller may cancel the Contract or any remaining balance thereof, Buyer remaining liable to pay for any products already shipped.

Deliveries/Title: Delivery of products to a carrier shall constitute delivery to Buyer, and risk of loss shall thereupon pass to Buyer, but title shall remain with Seller until Buyer makes payment in full under the Contract. Delivery route shall be at the election of Seller unless specifically designated by Buyer. Should delivery of all or any portion of the products (or any other obligation of Seller) be delayed by events beyond Seller's control, Seller's time for performance shall be extended by the period of delay. Buyer or Seller may cancel the Contract without liability, if the period of delay exceeds 60 days. Buyer shall remain liable to pay for any products delivered prior to cancellation.

Orders: Each order for products is subject to acceptance in writing by Seller. Under no circumstances may orders be cancelled or rescheduled after delivery by Seller to the carrier. In the event products are to be delivered in multiple shipments over time, Seller may determine allocations and scheduling in fair manner. Buyer may cancel or reschedule a delivery of products by written notice delivered to Seller at least thirty (30) days prior to the scheduled delivery date. Products may not be returned for credit without written permission of Seller. Products accepted for return will be subject to a 15% re-stocking charge. Notwithstanding any other terms hereof, special orders for items not normally stocked are non-cancellable and non-returnable.

Seller's Limited Warranty; Limitation of Liabilities: Except as specifically set forth herein, Seller makes no warranties of any kind, express or implied, with respect to any products it sells, including without limitation any warranties, representations or covenants that the products conform in any way with the applicable manufacturer's specifications. In particular, Seller makes no warranty respecting the merchantability of the products or their suitability or fitness for any particular purpose or use. Seller's sole warranty is that any product sold by it will be subject to the original manufacturer's warranty, if any. Seller is not a guarantor of manufacturer's obligations under its warranties. Upon written request from Buyer, Seller will execute such documentation as may be reasonably necessary, in the opinion of Seller's counsel, to transfer to Buyer such transferable warranties and indemnities, if any, which Seller actually received from the manufacturer of the products. If the products are defective and the original manufacturer's warranties are invalid due to actions of Seller, Seller shall, upon return of all defective products to it, refund to Buyer the full purchase price paid by Buyer, including actual shipping costs for such defective products. With respect to products covered by a valid manufacturer's warranty and which are defective or do not meet applicable manufacturer's specifications, Seller may, but shall not under any circumstances be under any obligation to, (a) refund Buyer's purchase price for such products (without interest or any other cost or expense), (b) replace such products, if such products are returned to Seller in the same condition as when shipped by Seller within ten (10) days of the date received by Buyer, freight charges prepaid, or (c) effect such other remedy, if any, as it may choose. Under no circumstances shall buyer be entitled to, or shall Seller be liable for, any indirect, special, incidental, consequential or any other damages of any nature including, without being limited to, loss of profit, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers. Under no circumstances shall Buyer's recovery from Seller for any claim exceed Buyer's purchase price for the products plus actual shipping cost, irrespective of the nature of the claim, whether in contract, tort or otherwise.

Use of Products in Life Support Applications: Products sold by Seller are not designed for use in life support equipment or any other equipment in which malfunction of such product can reasonably be expected to result in personal injury. Seller's customers using or selling such products for use in any such equipment do so at their own risk and agree to fully indemnify Seller and the manufacturer of such products for any damages including attorneys fees and costs resulting to such entities from claims made arising from such use or sale.

Rejections and Returns: Buyer is deemed to have accepted the products unless written notice of rejection describing defects in sufficient detail is received by Seller within seven (7) days after Buyer's receipt of products. Buyer waives any right to revoke acceptance thereafter. Products properly rejected in accordance herewith may be returned to Seller, provided they are returned freight prepaid in original factory sealed packaging, complete with all packing materials within 30 days after notice or rejection. No other return of Products will be accepted by Seller without a return material authorization number (RMA#), which will be issued in Seller's sole discretion. All improperly returned products will be returned to Buyer, freight charges payable by Buyer. Claims of later delivery are barred unless made prior to receipt of products and the acceptance of products shall constitute a waiver of any such claims. Written notice of shortages must be received by Seller within seven(7) days after Buyer's receipt of products, and failure to give such timely notice shall constitute a waiver of Buyer with respect to claims of shortages.

Taxes/Freight: Unless otherwise agreed in writing, all freight charges from Seller's location and all taxes or other charges imposed by any governmental authority upon the sale, purchase or resale of the product which may be paid by Seller or for which Seller may be liable, shall be paid to Seller by Buyer in addition to the purchase price of the Products.

Jurisdiction; Venue; Binding arbitration: The Contract shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to its conflicts of laws rules. Buyer agrees that Seller shall have the option of requiring that any and all disputes between Buyer and Seller relating in any way to the Contract shall be submitted to binding arbitration under the auspices of the American Arbitration Association, which arbitration shall be held in Bergen County, New Jersey. The arbitrator in such matter shall not have the power to assess attorneys' fees against Seller, and any decision reflecting otherwise shall be void and unenforceable. In the event that Seller does not invoke the binding arbitration referred to herein, the matter shall not be arbitrated but may be litigated. Any litigation arising out of any such matters shall be filed in the New Jersey Superior Court. Buyer hereby specifically consents to the exercise of personal jurisdiction by such Court over Buyer. Buyer consents and agrees that the venue in any such claim must be Bergen County, hereby waives any objection to such venue, and hereby agrees that it shall not file suit in any other court or venue.

General: Except by a explicit waiver in writing and signed by the President of Seller, no actions or writings of any kind by any representative of Seller shall constitute a waiver of any of the terms hereof, and Buyer is hereby specifically notified that no person other than the President is authorized to waive or modify any of the terms hereof. The Contract contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements or communications between them relating to the subject matter hereof. The Contract may not be assigned, modified or cancelled without Seller's prior written consent, and any attempt to assign, modify or cancel it without such consent shall be void. No delay or omission to exercise any right, power or remedy accruing to Seller under the Contract shall be construed as a waiver of any such right, power or remedy. In the event any of the provisions hereof shall be held void or unenforceable, the remaining provisions shall remain in full force and effect, and the void and unenforceable provision(s) shall then be modified to the minimum extent necessary so as to give effect to the intent of such provision(s) to the extent legally permissible.