



AC HORN MANUFACTURING

## A.C. HORN MANUFACTURING

### TERMS AND CONDITIONS OF SALE

1. The customer listed on the face of the accompanying quote (the "Quote") is referred to as "Buyer" and A.C. Horn Manufacturing is referred to as "Seller." These Terms and Conditions of Sale (these "Terms"), the accompanying Quote, and any invoice issued by Seller are collectively a binding contract (the "Contract") between Buyer and Seller upon the terms and conditions set forth herein and therein and supersede all prior and contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
2. All Quotes shall expire and shall be void 30 days from the date of the Quote unless otherwise expressly provided in the Quote or otherwise agreed to in writing by Seller. The Quote may be modified or withdrawn by Seller at any time before Seller's receipt of Buyer's confirming acceptance.
3. Buyer shall indicate its acceptance of Seller's Quote by signing and returning the ACCEPTANCE (attached to the Quote) to Seller, which signed ACCEPTANCE shall constitute Buyer's "Order." Buyer's Order shall not be effective unless and until it is approved at Seller's office in Dallas, Texas, by an authorized officer or agent of Seller. Neither the Quote, nor any Order shall be binding on Seller until the ACCEPTANCE is both received and approved in writing by Seller in accordance with these Terms, and Seller shall have no liability to Buyer with respect to Orders that are not accepted. Upon acceptance of an Order, it will become a part of the Contract.
4. Unless otherwise agreed in writing on the Quote: all deliveries will be EXW Seller's premises; all loading, shipping, and insurance charges will be for the account of Buyer; Seller's responsibility will cease upon delivery of shipments to carrier at point of shipment; title and risk of loss pass to Buyer upon delivery at point of shipment; and Seller shall not be liable for any delays, loss or damage in transit. Buyer shall inspect all goods and other material, equipment and property shipped pursuant to the Contract (collectively, the "Goods") upon arrival and shall immediately notify carrier in writing of any loss or damage to such Goods in transit. Buyer hereby assumes the risk of loss from any hazards occurring after delivery by Seller to carrier for shipment to Buyer. Buyer agrees to assert all claims for damages or losses in traffic directly against carrier.
5. As collateral security for the payment of the purchase price of all Goods purchased under the Contract, until Buyer has completed payment of the purchase price, in lawful money of the United States, and fully performed all of the terms and conditions of the Contract, Buyer hereby grants to Seller a first and prior security interest in and to all of Buyer's right, title, and interest in, to, and under all Goods covered hereby, wherever located, including additions and substitutions, and any and all proceeds therefrom (including insurance proceeds); Buyer shall keep such Goods in good working condition and free of liens; and Buyer shall maintain such insurance on said Goods as may be requested by Seller. The security interest granted by Buyer under this provision constitutes a purchase money security interest under the Uniform Commercial Code as adopted in the State of Texas ("UCC"). Seller may file a financing statement for such security interest and Buyer shall execute such statements or other documentation necessary to perfect Seller's security interest in such Goods. Buyer also authorizes Seller to execute, on Buyer's behalf, such statements or other documentation necessary to perfect Seller's security interest in such Goods. The Goods covered hereby shall at all times be deemed personal property even though such Goods may be attached to realty. Unless otherwise agreed in writing on the Quote, Buyer shall pay Seller at its principal office at Dallas, Texas in U.S. dollars the cash balance, if any, for all Goods covered hereby upon presentation to Buyer of an invoice for such Goods and/or a bill of lading showing the shipment of such Goods. Seller specifically reserves the right to ship under reservation for payment against documents of title and Seller, at its option, may withhold delivery of a bill of lading to the Buyer until Buyer has completed payment of the purchase price and fully performed all of the terms and conditions of the Contract. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.
6. In the event that Buyer fails to make any payment or payments required to be made under the Contract when due, or otherwise defaults in the performance of any of the terms and conditions of the Contract, Seller shall have all the rights



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and remedies available under the Contract or as provided by the UCC or other applicable federal, state, or local laws, regulations, ordinances, or codes (“Laws”).

7. Any excises, levies or taxes which the Seller may be required to pay or collect, under any existing or future Laws, upon or with respect to the sale, purchase, ownership, delivery, storage, processing, use, consumption or transportation of any of the Goods covered hereby shall be for the account of Buyer, and Buyer agrees to pay the amount thereof to the Seller upon request.
8. Buyer shall pay interest on all balances due to Seller over 30 days old at the lesser of the rate of 1-1/2% per month or the highest rate permissible under applicable Law, calculated daily and compounded monthly. Buyer shall also reimburse Seller for all costs incurred in collecting any late payments, including without limitation, attorneys’ fees.
9. **LIMITED WARRANTY.** Seller guarantees new equipment of its own manufacture and equipment reconditioned by the Seller against material defects in workmanship and material (the result of ordinary wear and tear, neglect, misuse, accident and excessive deterioration due to corrosion from any cause not to be considered a defect), for a period of one year from the date of shipment, but Seller's liability for materially defective parts shall in no event exceed, at Seller's option, the repairing of such parts or the furnishing of replacement parts DAP Buyer’s premises. Buyer agrees Seller shall determine in the exercise of its sole discretion the existence of any material defect in equipment, the cause thereof, the necessity for repair or replacement of such equipment and the method and manner therefor. Buyer agrees to pay all reasonable labor charges for installing replacement parts covered by the guarantee herein. In the case of parts which are purchased separately, the guarantee period shall be 90 days from the date of shipment of such parts. Seller shall not be liable for a breach of the warranty set forth in this paragraph unless Buyer immediately notifies Seller in writing of any material defect in workmanship or materials of any Goods subject to the limited warranty herein provided. The limited warranty of Seller set forth herein is subject to and contingent upon the strict compliance by Buyer of all installation and use instructions given by Seller to Buyer with respect to the Goods sold pursuant to the Contract. Seller shall not be liable for a breach of the warranty set forth in this paragraph if Buyer alters or repairs the equipment without the prior written consent of Seller. With respect to equipment sold by Seller which was not manufactured or reconditioned by Seller, no warranty of any kind is made by Seller expressed or implied, and such equipment is not covered by the warranty in this paragraph, but Seller will use commercially reasonable efforts to pass on to Buyer the benefits of the original manufacturer's warranty applicable to such equipment and to extend reasonable cooperation to Buyer in the enforcement of such warranty claims.

THE ABOVE PROVISION SETS FORTH THE SOLE AND EXCLUSIVE OBLIGATION OR LIABILITY OR ANY WARRANTY MADE BY SELLER IN CONNECTION WITH THE GOODS, AND ANY PROVISIONS IN ANY SPECIFICATIONS, OR IN ANY OTHER PROVISION OF THE CONTRACT, ARE MERELY DESCRIPTIVE AND ARE NOT TO BE CONSTRUED AS EITHER OBLIGATION OR WARRANTY ON BEHALF OF SELLER.

EXCEPT FOR THE GUARANTEE AND WARRANTY EXPRESSLY SET FORTH ABOVE, THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, OR WARRANTIES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY WARRANTY REGARDING THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY), NOT SPECIFIED HEREIN, RESPECTING THE CONTRACT OR PERTAINING TO THE GOODS COVERED BY THE CONTRACT, AND BUYER HEREBY WAIVES ALL SUCH UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, AND WARRANTIES. THE CONTRACT EXPRESSES THE ENTIRE UNDERSTANDING OF BUYER AND SELLER WITH REFERENCE TO THE SUBJECT MATTER OF THE CONTRACT AND THERE ARE NO UNDERSTANDINGS OR AGREEMENTS IN ANY WAY LIMITING, EXTENDING, DEFINING OR RELATING TO THE PROVISIONS OF THE CONTRACT.

10. **LIMITED LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE



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POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD UNDER THE CONTRACT. THE LIMITATION OF LIABILITY SET FORTH IN THIS PARAGRAPH SHALL NOT APPLY TO (I) LIABILITY RESULTING FROM SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR (II) DEATH OR BODILY INJURY RESULTING FROM SELLER'S ACTS OR OMISSIONS.

11. Seller shall not be liable to Buyer or any third party (including any governmental authority) and Buyer shall indemnify, defend, and hold harmless Seller from loss, damage or injury to persons (including death), or to property or things of whatever kind (including, without limitation, products processed by the use of the Goods), occasioned by or arising out of the installation, maintenance of whatever kind (including, without limitation, products processed by the use of said Goods), occasioned by or arising out of the installation, maintenance, use, nonuse, repair or replacement of the Goods, or out of the use of any method or process for which the same may be employed (including, without limitation, the failure of the Seller or the Goods to comply with any applicable Laws); nor shall Seller be liable to Buyer for damages of any kind or nature (including, but without limitation, any loss of anticipated profits) directly or indirectly sustained or alleged to have been sustained by Buyer as a result of the installation, maintenance, use, inability to use, nonuse, repair or replacement, or delay in delivery, or as a result of any breach of warranty.
12. If Seller's performance of its obligations under the Contract is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Seller shall not be deemed in breach of its obligations under the Contract or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay. Seller shall not be liable to Buyer for any loss or damage suffered by Buyer, directly or indirectly, as a result of Seller's failure to perform, or delay in performing, any terms or conditions of the Contract. Delivery dates given are approximate and while every effort will be made to meet such delivery dates, Seller will not be liable for damages on account of any delays.
13. Buyer shall at all times comply with all Laws applicable to (i) the Contract and Buyer's performance hereunder; and (ii) Buyer's purchase, ownership, installation, operation, storage, and maintenance of the Goods, including without limitation, any applicable emissions standards and any applicable electrical or other utilities or building codes. Without limiting the generality of the foregoing, Buyer shall, at its own expenses, maintain in effect all licenses, permissions, authorizations, consents, certifications, credentials, and permits necessary to conduct its business related to the purchase, ownership, installation, operation, storage, and maintenance of the Goods, and shall not engage in any activity or transaction involving the Goods, by way of shipment, use, or otherwise, that violates any Law. In addition, Buyer acknowledge and agrees that Buyer shall be solely responsible for ensuring that the Goods purchased by Buyer meet all applicable standards and comply with all applicable Laws in connection with the anticipated use of the Goods in Buyer's business (including without limitation, any applicable emissions standards and applicable electrical or other utilities or building codes) and Buyer hereby represents that Buyer has conducted the necessary research and verified that the Goods identified in the Quote are adequate and sufficient to meet any such applicable standard and comply with all such Laws applicable to Buyer's business and its use of the Goods.
14. Seller shall retain the right to make necessary and essential changes to the Goods, or any material or equipment used or specified for use in, the Goods, in accordance with the design intent of the Goods, or as necessary to manufacture the Goods consistent with other like items in Seller's product line, in each case, as determined by Seller in its sole discretion. Following the final acceptance of any Quote by Seller, Buyer may request changes to the Goods, or any material and equipment used or specified for use in the Goods as covered by the Quote by providing written notice to Seller describing such requested changes. Upon the mutual agreement by Buyer and Seller of any changes, including without limitation, any required price changes related to changes to the Goods, such changes shall be incorporated into the Contract, provided that these Terms shall continue to be applicable thereto, the same as if such additional or substituted material and equipment had been originally purchased under the Contract.



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15. Buyer acknowledges and understands that any capacity or capacities referenced or shown on the Quote or otherwise indicated by Seller with respect to the Goods are estimates only and many factors can and will affect the actual capacity or capacities of the Goods, including without limitation, the physical properties of the raw products, environmental factors, processing methods, other equipment being used in conjunction with the Goods, and the characteristics of the desired finished product. Buyer shall be solely responsible for any and all calculations and projections made with respect to product output in connection with Buyer's use of the Goods as well as any losses related to actual capacity of the Goods and Seller shall have no liability with respect thereto.
16. Waiver by Seller of any default or breach of Buyer shall not be construed as a waiver of any subsequent default or breach, and the acceptance by Seller of overdue payments shall not constitute a waiver of any default or breach except with respect to the payments so accepted. No extension of time of payment or other indulgence granted to Buyer shall operate as a waiver of any of Seller's rights under the Contract.
17. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. In the event that the terms or conditions stipulated in Buyer's Order (or other purchase order) are inconsistent with these Terms, these Terms shall govern and fulfillment of Buyer's Order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. Subject to Paragraph 14 above, the Contract may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party and all orders are subject to the provisions herein set forth.
18. The Contract and all matters relating to or arising out of the Contract shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Contract. The International Chamber of Commerce's Incoterms Rules shall apply but where they conflict with these Terms, these Terms shall prevail. Any legal suit, action or proceeding arising out of or relating to the Contract shall be instituted in the federal courts of the United States of America or the courts of the State of Texas, in each case located in the City of Dallas and County of Dallas, and Buyer and Seller irrevocably submit to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THE CONTRACT OR ANY PART THEREOF, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THE CONTRACT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.**
19. In addition to any remedies that may be provided under the Contract, Seller may terminate the Contract with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under the Contract and such failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with the Contract, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
20. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached the Contract, for any failure or delay in fulfilling or performing any term of the Contract when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic or pandemic (whether or not there is any governmental or other response to such epidemic or pandemic or such epidemic or pandemic is declared a public health emergency), lockouts, strikes or other labor disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.



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- 21. Buyer shall not assign any of its rights or delegate any of its obligations under the Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this paragraph is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Contract.
- 22. The relationship between Buyer and Seller is that of independent contractors. Nothing contained in the Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between Buyer and Seller, and neither Buyer nor Seller shall have authority to contract for or bind the other in any manner whatsoever.
- 23. The Contract is for the sole benefit of Buyer and Seller and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Contract.
- 24. All notices, requests, consents, claims, demands, waivers and other communications under the Contract (each, a "Notice") shall be in writing and addressed to Buyer or Seller, as applicable, at the addresses set forth on the Quote or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Contract, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this paragraph.
- 25. If any term or provision of the Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 26. Buyer shall have no right to cancel any Order without the prior written consent of Seller, which may be withheld unless Buyer first reaches an agreement in writing with Seller covering all reasonable cancellation charges. If Buyer desires to cancel an order, Seller shall be entitled to charge Buyer a restocking fee in Seller's sole discretion. Such restocking fee is designed to compensate Seller for its damages from such cancellation and as such shall be deemed to be liquidated damages and not a penalty. Seller's election to charge Buyer a restocking fee shall not be deemed to be an exclusive remedy, and Seller's election of that remedy shall not preclude other remedies at law or in equity that may be available to Seller. The following restocking fees are minimum fees and may be increased by Seller if special circumstances cause such restocking fee to be an insufficient measure of Seller's damages arising in connection with such cancellation.

<b>If Buyer cancels order within following period:</b>	<b>Then minimum restocking fee shall be:</b>
30 days or less from date Buyer executes or otherwise agrees to quote	20% of total price reflected in quote
31 days to 90 days from date Buyer executes or otherwise agrees to quote	50% of total price reflected in quote
91 days or more from date Buyer executes or otherwise agrees to quote	100% of total price reflected in quote

- 27. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Contract, including without limitation, the following provisions: Paragraphs 5, 6, 7, 9, 10, 11, 13, 17, 18, and 27.