

## TERMS AND CONDITIONS OF SALE

**1. PRICE; OFFER; ACCEPTANCE.** The sale of products ("Products") by Shoemaker Manufacturing, LLC ("Seller") to the "Buyer" identified on the Product purchase order (the "PO"), are exclusively governed by these Terms and Conditions of Sale and Seller's price list (collectively, these "Terms") both of which form a part of Seller's acknowledgement of each PO (the "Order Acknowledgment"). Seller reserves the right to increase any price upon prior notice or when Seller's costs increase including, without limitation energy, labor, government tariffs, and raw material costs, or modifications to the Specifications (defined herein). When Buyer issues a PO or accepts the Products, Buyer accepts these Terms, and any additional or different terms or modifications to these Terms proposed by Buyer, whether in the PO or otherwise, are expressly rejected by Seller except for terms related to Product prices, quantity, Specifications, delivery schedules, and locations that align with the Order Acknowledgment. Seller's issuance of an Order Acknowledgment constitutes Seller's acceptance of Buyer's PO subject to the express condition that Buyer accept that these Terms and the Order Acknowledgment constitute the entire agreement between the parties (the "Contract"), and Buyer will be deemed to have so accepted unless Buyer notifies Seller to the contrary in writing within 10 days following receipt of the Order Acknowledgment. These Terms do not apply if the parties have executed a separate formal written agreement.

**2. CHANGES; RETURNS.** Seller will consider Buyer's requests for changes to a PO; however, Seller may charge fees for changes involving Products (a) not stocked as a standard item; (b) not packed in standard cartons or packages; or (c) for which special manufacturing or fabrications are involved. POs with indefinite delivery dates may be accepted upon the understanding that Seller will have the right to fill the PO as it sees fit in the course of its manufacturing schedules and to hold the Products for Buyer's account at Buyer's expense and risk pending receipt of definite shipping instructions and, where required, of governmental authorization. Products may be returned to Seller for credit only if permission for such return is granted by Seller in accordance with its return policy. Special orders (i.e., private label or special packaging) cannot be returned for a credit once the PO has been placed.

**3. TERMS OF PAYMENT.** Unless different terms of payment are stated in the Order Acknowledgment, Buyer will pay in USD, without offset, all invoiced amounts within 30 days following the date of Seller's invoice. Seller may charge and collect interest at the rate of 1.5% per month or the maximum rate permitted by applicable federal, state, local and international laws, orders, rules, regulations and ordinances ("Applicable Law") for overdue amounts, whichever is less. Seller may, among other remedies in equity and at law, including the right of setoff, either terminate this Contract or to suspend further deliveries in the event Buyer fails to make any payment when it is due. Seller reserves the right to require full or partial payment in advance based on Seller's opinion of Buyer's credit or financial condition. Except where otherwise prohibited by Applicable Law, all applicable sales, excise, use or similar taxes or charges for the sale of Products will be in addition to the stated price and paid by Buyer.

**4. INSPECTION; ACCEPTANCE.** Seller will inspect the Products prior to shipment to confirm that they comply with the terms of this Contract and the Product materials, qualities and components which comprise the Product, including, but not limited to, size, technical standards, storage requirements, quality standards, shelf-life and any other pertinent features of the Product (the "Specifications"). Buyer will have a period of 15 days to inspect the Products following physical receipt ("Inspection Period") and either (a) accept the Products as delivered; or (b) notify Seller of any nonconforming Products on or before the expiration of the Inspection Period, stating with specificity all defects, and furnishing such other written evidence or other documentation as may be reasonably required by Seller (including the subject Products, or a representative sample thereof, which Buyer contends are nonconforming Products).

**5. DELIVERY.** Products will be delivered EXW – Seller's facility (Incoterms 2020) unless a different shipping method is stated on the Order Acknowledgment. Buyer takes title and risk of loss to the Products upon delivery, and expenses will thereafter rest upon Buyer including without limitation all risks and expenses incurred in the storage and transportation of the Products and all insurance charges, fees, taxes, customs, duties and other governmental charges or levies and all other expenses whatsoever thereafter incurred with respect to the Products. Delivery dates are estimated and are subject to change. Seller may make delivery in installments, each of which may be separately invoiced and paid as billed without regard to subsequent deliveries. Delay in delivery of any installment will not relieve Buyer of its obligation to accept remaining installments. Seller will use reasonable efforts to deliver Products on time, but will not be liable for any expenses or damages incurred as a result of late delivery. Freight charges on shipments outside of the US will be as specified on the Order Acknowledgment or on the price list for the Products. In the event of any general increase in freight costs or any ruling or regulation affecting freight rates which results in increased freight costs, Seller may, at its option, increase the price for the Products to reflect such additional freight costs without advance notice. All Products are shipped in nonrefundable containers.

**6. END USE.** Buyer is solely responsible for determining the suitability of the use for the Products. Buyer agrees that Seller is not responsible for any loss, damage or injury to person or property arising out of Buyer's purchase, possession, or use of any Products supplied by Seller. Buyer will comply with the Specifications and all Applicable Laws relating to the use, storage and/or handling of the Products. Buyer will indemnify Seller against any and all losses, damages, liabilities, claims, suits, costs and expenses, including reasonable attorney's fees and court costs ("Claims") which may be brought against, suffered or incurred by Seller as a result of any personal injury (including death) and/or any property damage arising out of or connected with the utilizing, handling, storing, transporting, or other use or resale of the Products.

**7. LIMITED WARRANTY; LIMITATIONS.** Product warranties are posted on Seller's website at the following link: <https://www.shoemakermg.com/limited-warranty.pdf> (the "Limited Warranty"). If requested by Seller, Buyer will promptly return to Seller all unconsumed Products alleged by Buyer to be materially defective, and Seller will pay freight thereon. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WILL NOT APPLY TO THIS WARRANTY OR CONTRACT. SELLER WILL NOT BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY LOSS OF USE OF THE GOODS, INCONVENIENCE, OR DAMAGES OF ANY TYPE, WHETHER DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL (INCLUDING DAMAGES FOR LOSS OF GOODWILL, LOSS OF REVENUE OR PROFIT, ECONOMIC LOSS, PROPERTY DAMAGE OR WORK STOPPAGE AND INCLUDING ATTORNEYS' FEES).

**8. PATENT INFRINGEMENT.** Seller will defend or settle at its sole expense any patent infringement Claims against; provided (a) the alleged infringement does not arise from Seller's compliance with Specifications prescribed or otherwise furnished by Buyer; (b) Seller receives prompt written notice of such Claim and exclusive control over the its defense and/or settlement; and (c) Buyer provides Seller with all information available to Buyer for the defense and cooperates with Seller in the defense, and does not take a position adverse to Seller. Further, Seller will have no liability hereunder to the extent a claim of infringement is based on (1) a modification to the Products by Buyer or a third party, but only to the extent that such Claim would have been avoided, but for such modification; (2) use by Buyer of the Products in combination with other products not made by Seller, but only to the extent that such Claim would have been avoided, but for such combination; or (3) Products made to Specifications not provided by Seller. Should a Claim arise, Seller may, in its sole discretion (a) procure the right for Buyer to continue using the Products; (b) replace the Products with non-infringing Products; (c) modify the Products to make them non-infringing; or (d) if Seller determines that options (a) through (c) are not practical, terminate Buyer's right to use the Products and issue Buyer a refund equal to the purchase price for the affected unused Products. This paragraph states Seller's entire liability and Buyer's exclusive remedy for Claims related to patent infringement, copyright, trade secret or other intellectual property infringement.

**9. FORCE MAJEURE.** With the exception of payment and confidentiality obligations, neither party will be liable if its performance is delayed or made impossible or commercially impracticable due to acts of God, unusually severe weather, civil commotion, terrorism, military authority, war, riot, fire, labor trouble or strikes, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental requests, Applicable Laws, unforeseen circumstances, or causes beyond such party's reasonable control.

**10. CHOICE OF LAW; COMMENCEMENT OF ACTION; COSTS AND EXPENSES.** This Contract will be governed and interpreted in accordance with the laws of the State of Texas. Any action against Seller for breach of contract, breach of warranty or otherwise must be commenced within 1 year after the cause of action has accrued. Buyer will be obligated to Seller for all costs and expenses (including reasonable attorney's fees and expenses and fees for collection agencies) incurred by Seller in collecting any amounts not timely paid by Buyer hereunder or in exercising any of its other rights hereunder.

**11. CONFIDENTIALITY.** Buyer agrees that all formula and technical and pricing information relating to the Products are confidential and proprietary to Seller and that Buyer is purchasing the Products solely for use and consumption by Buyer's, as applicable, and not for analysis, reverse engineering resale or other distribution to third parties, all of which are strictly prohibited. Buyer will not disclose any confidential or proprietary information about Seller or the Products to any other person or use any such information for any purpose other than Buyer's purchase and use of the Products. Buyer will not provide samples or extra Products to any third parties.

**12. COMPLIANCE.** The parties will comply with Applicable Laws governing the export/import and sale of the Products, including all applicable laws related to commerce, environmental, health and occupational safety, employment and labor, US and foreign bribery and corruption (i.e., Foreign Corrupt Practices Act, anti-boycott measures, US export control and economic sanctions and embargoes, international customs requirements and the local laws in countries of import. Unless otherwise agreed in writing, Buyer will be responsible for compliance with applicable statutory and regulatory requirements relating to chemicals during Buyer's import, shipping, storage, export, distribution, application and use of Products. If Buyer exports, re-exports, diverts, stores, transfers, distributes, applies, uses or imports the Products, Buyer assumes responsibility for obtaining any export/import authorizations and for complying with any required registration and/or disclosures relating to chemicals. Unless otherwise agreed, Seller is not responsible for regulatory and other legal compliance (a) outside the US, including, without limitation, the European regulation for the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"); (b) as to goods made by Buyer which incorporate the Products; or (c) as to any use of the Products by Buyer other than as covered by the Limited Warranty.

**13. ENTIRE AGREEMENT; WAIVER; SEVERABILITY.** This Contract constitutes the entire agreement between Buyer and Seller with respect to the sale of Products supplied hereunder. Waiver by a party of any provision hereof in one instance will not constitute a waiver as to any other instance. If any provision of this Contract is unenforceable, invalid or illegal, the remaining provisions will remain in full effect.