

MENK-USA, LLC. — TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** These Terms and Conditions of Sale apply to all offers made by and orders accepted by Menk-USA, LLC (Menk). These Terms and Conditions are material terms to Menk's offer to you (Buyer) as set forth in Menk's quotation. In the event Buyer's purchase order constitutes the offer to Menk, Menk's acceptance of Buyer's order is expressly conditioned upon Buyer's assent to these terms and conditions, excluding all other terms and conditions. Any change to these Terms and Conditions of Sale must specifically be agreed to in writing by Menk.

2. **GOVERNING LAW.** All sales hereunder shall be governed by the law of Illinois, without regard to conflicts of laws. Buyer consents to jurisdiction of the federal or state courts located in Winnebago County Illinois, for purposes of any suit, action or proceeding arising out of this Agreement. Venue for all actions involving Menk-USA, LLC and Buyer shall be in Winnebago County, Illinois.

3. **TERMS OF PAYMENT.** Terms of payment, unless otherwise set forth in Menk's quotation or confirmation of order are net cash thirty (30) days from the date of each invoice.

4. **WARRANTY.** THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THIS AGREEMENT. MENK-USA, LLC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. BUYER UNDERSTANDS AND AGREES THAT ALL WARRANTIES IMPLIED BY THE PROVISIONS OF APPLICABLE LAW ARE EXCLUDED FROM THIS AGREEMENT. THE USE OF ANY SAMPLE OR MODEL DURING THE NEGOTIATIONS LEADING TO THIS AGREEMENT SERVES MERELY TO INDICATE THE TYPE OF GOODS THAT WILL BE TENDERED TO THE BUYER. THE SAMPLES OR MODELS CREATE NO WARRANTY THAT THE GOODS SHALL CONFORM TO THE SAMPLES OR MODELS. MENK-USA, LLC MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO THE FREEDOM OF THE GOODS COVERED BY THIS AGREEMENT FROM CLAIMS OF INFRINGEMENT BY THIRD PARTIES ARISING FROM TRADEMARK, PATENT, OR OTHER PROPERTY RIGHTS IN THE GOODS. MENK-USA, LLC DOES NOT WARRANT THE GOODS FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT. BUYER ACKNOWLEDGES THAT BUYER IS MAKING THIS PURCHASE AFTER, AND IN COMPLETE RELIANCE ON, BUYERS FULL AND ENTIRE INSPECTION OF THE GOODS TO BE SOLD UNDER THIS AGREEMENT AND NOT BY REASON OF ANY REPRESENTATION MADE BY OR ON BEHALF OF MENK-USA, LLC AS TO THE MERCHANTABILITY, SPECIFIC ATTRIBUTES, OR OTHERWISE OF THE GOODS.

5. **SHIPPING TERMS AND RISK OF LOSS.** All sales by Menk-USA, LLC are EX works Menk-USA, LLC place of shipment. Title to and risk of loss or damage to products shall pass to Buyer on Menk's placing of the products in the custody of a carrier for shipment. Menk-USA, LLC shall in no event have any responsibility for any damage caused to the products during shipment. Menk-USA, LLC shall not be liable for any loss or expense (consequential, incidental, or otherwise) incurred by Buyer or Buyer's customers if Menk-USA, LLC fails to deliver goods within the time provided for in an order.

6. **DELAYS; CANCELLATION.** Menk-USA, LLC shall not be liable for any damages or penalty for delay in delivery or for failure to give notice of delay. The order is not subject to delay or cancellation by Buyer unless Buyer gives written notice to Menk-USA, LLC and Menk-USA, LLC issues a revised order acknowledgment that accepts Buyer's request. Upon such delay or cancellation Menk-USA, LLC may demand payment based on the purchase price and the percentage of completion as determined by Menk-USA, LLC and payment covering Menk's increased costs, including storage and insurance, because of the cancellation.

7. **NOTICE.** All notices of any kind which either Menk-USA, LLC or Buyer may be required or desire to serve upon the other party under this Agreement shall be in writing and shall be served by certified mail, return receipt requested, and shall be deemed properly delivered and received when deposited postage prepaid in the U.S. Mail.

8. **CLAIMS PROCEDURE.** Buyer shall inspect all goods upon delivery. All claims for shortages or delivery or non-conforming goods shall be given within ten (10) days of Buyer's receipt of the goods. Failure of Buyer to notify Menk-USA, LLC in writing of any defects in the products within the foregoing ten (10) day period shall serve as a bar of claims against Menk. Upon satisfactory proof of claim by Buyer, Menk-USA, LLC will within a reasonable time make necessary repairs or replacements, or, where the

foregoing are deemed by Menk, in its sole discretion, to be commercially impractical, refund the purchase price upon return of the products. Repair or replacement parts provided under this remedy will be supplied by Menk-USA, LLC free of charge, F.O.B. shipping point. Buyer charges for repairs, replacements or returns for credit will not be allowed unless previously authorized by Menk-USA, LLC in writing.

9. **LIMIT OF LIABILITY.** MENK'S SOLE AND EXCLUSIVE LIABILITY ON ANY CLAIM HEREUNDER, WHETHER IN TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) OR IN CONTRACT, AND WHETHER ON ACCOUNT OF MENK'S DELIVERY OF NON-CONFORMING GOODS OR NON-DELIVERY, SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE DEFECTIVE OR NON-CONFORMING GOODS OR REPAYMENT OF THE PURCHASE PRICE FOR THE GOODS OR PART THEREOF WHICH GIVES RISE TO THE CLAIM, AS MENK MAY IN ITS SOLE DISCRETION ELECT. MENK'S LIABILITY IN CONNECTION WITH ANY CLAIM HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS, AND MENK'S SAID LIABILITY FOR BUYER'S MATERIALS IN MENK'S POSSESSION SHALL NOT EXCEED MENK'S CHARGES FOR WORK DONE ON THE MATERIALS. IT IS EXPRESSLY AGREED THAT THE FOREGOING REMEDY IS BUYER'S SOLE AND EXCLUSIVE REMEDY. IN NO EVENT SHALL MENK BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COSTS OF ANY KIND RESULTING DIRECTLY OR INDIRECTLY FROM MENK'S PRODUCTS OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, PRODUCTION, SALES OPPORTUNITIES OR BUSINESS REPUTATION, DAMAGE TO GOODWILL, OVERHEAD EXPENSE, LOSS OF TIME, DAMAGE TO EQUIPMENT OR PROPERTY, INCONVENIENCE OR ANY OTHER LOSS. NOTWITHSTANDING ANY STATUTORY PERIOD OF LIMITATIONS TO THE CONTRARY, BUYER MUST INSTITUTE LEGAL ACTION ON ANY CLAIM OR CAUSE OF ACTION AGAINST MENK-USA, LLC WITHIN ONE (1) YEAR OF BUYER'S RECEIPT OF THE GOODS THAT ARE THE SUBJECT OF THIS AGREEMENT. AS USED IN THIS SECTION 9 "MENK" SHALL INCLUDE, MENK'S AGENT, EMPLOYEES, DIRECTORS, OFFICER, SUBCONTRACTORS AND SUPPLIERS, AND RELATED ENTITIES.

10. **DAMAGES; EXPENSES.** In addition to Menk's right to exercise all remedies available at law or in equity against Buyer, Menk-USA, LLC shall be entitled to recover from Buyer all of Menk-USA, LLC's incidental damages including but not limited to all commercially reasonable charges incurred (1) in stopping delivery under the Uniform Commercial Code, (2) in storing the goods after a breach by Buyer, and (3) in connection with the return or resale of goods, as well as for any other damages resulting from Buyer's breach. Buyer agrees to pay Menk-USA, LLC's costs, expenses and attorneys' fees incurred by Menk-USA, LLC to enforce Buyer's obligations or Menk-USA, LLC's rights hereunder in collecting any money due from Buyer or in successfully defending against any claim made by Buyer.

11. **ENTIRE AGREEMENT; SEVERABILITY.** This Agreement constitutes the entire agreement between Menk-USA, LLC and Buyer and supersedes all previous agreements and understandings, whether oral or written between Menk-USA, LLC and Buyer with respect to the subject matter hereof. No addition to or modification of this Agreement shall be binding on Menk-USA, LLC unless made in writing and signed by a duly authorized representative of Menk-USA, LLC. In the event that any of the terms of this Agreement become or are declared to be invalid by a court of competent jurisdiction, such terms shall be null and void and shall be deleted from this Agreement, and all remaining terms of this Agreement shall remain in full force and effect.

12. **FORCE MAJEURE.** Menk-USA, LLC shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of God, acts of Buyer, acts of civil or military authority, war, riots, concerted labor action, or any other causes beyond the reasonable control of Menk-USA, LLC.

13. **EXCLUSION OF CISG.** The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not govern any aspect of this sale or the matters addressed herein.

14. **NON-EXCLUSIVITY.** Any sales from Menk-USA, LLC to Buyer are not exclusive and Menk-USA, LLC shall not be prohibited from selling any product to any person, firm, or entity.

15. **NON-ASSIGNMENT.** Buyer may not assign its rights, duties, or obligations hereunder without the prior express written approval of Menk-USA, LLC.