

TERMS AND CONDITIONS OF SALE - WUPPERMANN INC.

Wuppermann Inc. ("Wuppermann") is offering for sale its products, equipment, gear and accessories (collectively and individually, the "Product(s)") identified herein, subject to the following terms and conditions (the "Terms and Conditions" or the "Agreement"). The Terms and Conditions set forth the legally binding terms with respect to the purchase of the Product(s). The Customer (as identified by purchasers of the Product(s) and/or services offered by Wuppermann) ("Customer"), in consideration of the mutual covenants, agreements and provisions set forth herein and hereon, hereby agrees that the purchase of the Product(s) offered by Wuppermann shall be subject to and in accordance with the following Terms and Conditions:

1. ORDERS FOR PRODUCT(S), APPLICABILITY

All Customer order(s) for Product(s) shall be subject to these Terms and Conditions and, if applicable, an authorized quotation issued by Wuppermann. Such order(s), if accepted by Wuppermann, shall have significance as a reference document only. Wuppermann and the Customer, hereinafter sometimes referred to as the "Party" or "Parties," hereby agree that these Terms and Conditions shall govern and control the relationship between Wuppermann and the Customer, that the Terms and Conditions contained herein shall supersede the terms and conditions contained in a Customer-issued order, and that any deviation from these Terms and Conditions needs to be expressly agreed upon in writing by Wuppermann and the Customer. Wuppermann reserves the right to refuse orders in its sole discretion, or to accept such orders on a separate contract form, or to limit the types and amounts of the Product(s) ordered. Acceptance of or payment for any of the Products constitutes Customer's agreement to these Terms and Conditions.

2. PRICES

Prices for the Product(s) shall be the then current prices for such Product(s) in effect at the time of acceptance of an order by Wuppermann or in accordance with an authorized and valid Wuppermann quotation. Prices are exclusive of all charges or levies of any nature including all federal, state, municipal or other governmental excise, sales, use, occupational or like taxes now in force or enacted in the future and, therefore, are subject to an increase in amount equal to any tax Wuppermann may be required to collect or pay upon the sale or delivery of Product(s) purchased. If a certificate of exemption or similar document is required in order to exempt the sale from sales or use tax liability, Customer will obtain and furnish evidence of such exemption at time of placement of order. All prices are subject to adjustment on account of changes in specifications, quantities, shipment arrangements, and the like or the inclusion of terms and conditions which had not been part of any valid price quotation issued by Wuppermann.

3. PAYMENT TERMS; REVOCATION OF CREDIT

Payment of all invoice amounts shall be made in United States Dollars and by the date and terms set forth on the invoice. Overdue and unpaid invoice amounts shall bear interest at the rate of 1 ½ percent per month (annual rate of 18 percent). The obligation of Wuppermann to ship the Product(s) or otherwise perform hereunder shall be subject to the then current credit terms and policies as established by Wuppermann from time to time. Further, Wuppermann reserves the right at any time when, in its opinion and sole discretion, Customer's financial condition or other circumstances warrants it, to revoke, alter or suspend any credit already extended, or to require full or partial payments in advance of any shipment or other performance, or to otherwise defer or decline to make shipments under Agreement and the respective Customer order and/or terminate this Agreement or any order accepted hereunder without liability to Customer, except reimbursement for payments already made to the cancelled order.

4. SHIPMENT

Delivery of all products furnished hereunder shall be either ex works (EXW), Incoterms 2010, Wuppermann or to be defined in writing between the customer and Wuppermann. The risk of loss, title in and right of possession of the Product(s) and responsibility for all transportation expenses shall pass to the Customer upon delivery to the carrier. Subject to Wuppermann's right to stop shipment of Products already in transit, such carrier shall thereafter be deemed to be acting for Customer regardless of the carrier used or the freight terms. Shipment will be made "best way," either prepaid or collect, as requested by Customer. If Customer requests prepaid shipment, actual charges incurred shall be billed and shall be due and payable to Wuppermann in accordance with Wuppermann's regular payment terms. Wuppermann will not assume any liability in connection with such shipment, nor shall any carrier be its agent. All shipping dates quoted or otherwise agreed to by Wuppermann are estimates only. Wuppermann will use its reasonable efforts to meet scheduled dates, but assumes no liability for failure to do so.

In the event that an order remains in Wuppermann's warehouse for more than 14 days, Wuppermann has the right at its sole discretion to either: (i) deliver product to Customer and invoice Customer, or (ii) charge a restocking fee of 25% of the invoiced price and sell the Product(s) to third parties. Any extension beyond the 14 day period specified herein shall require the express written consent of Wuppermann.

Wuppermann shall retain title to all goods delivered until payment of the entire invoice amount has been received by Wuppermann; and customer shall execute and deliver to Wuppermann such documents as Wuppermann may require evidencing its interests in the goods.

5. FORCE MAJEURE

Wuppermann shall not be responsible for delays or non-performance directly or indirectly caused by governmental regulations or requirements, acts of God, unavailability of materials, work stoppages, slow-downs, boycotts or other causes beyond Wuppermann's reasonable control. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of the delay, and Customer shall not be entitled to refuse delivery or otherwise be relieved of any obligations hereunder, or have any claims against Wuppermann.

6. LIMITED WARRANTY

All Products offered by Wuppermann are warranted to the original purchaser of the Product(s) ("Purchaser") to be free from defects in workmanship and materials for a period of twelve (12) months. During the term of the warranty, Wuppermann will replace any Product(s) or part(s) thereof which prove to be defective in material and workmanship. A replacement will not be made for damage due to misuse, abuse, neglect, accident, or improper installation. A replacement will not be made for any damage incurred during the shipping process.

Wuppermann is not responsible for, and will not pay, any labor charges, damage incurred during installation, repair, or replacement, damage incurred to other related part(s), injuries, loss of income, incidental and consequential damages, damages or any other loss whatsoever connected therewith.

Warranty Terms

A. Enforcement of Warranty

(i) Notice: The Purchaser shall notify Wuppermann in writing of any defects in the Product(s) that the Purchaser has detected and requires to be corrected under this Warranty. Such notice shall be made without delay, but in any case within ten (10) days of and during the term of the Warranty. The notice shall contain a description of the defect and a description of the probable cause of it if available.

(ii) Remedy: If, after Wuppermann has conducted appropriate tests and inspections as determined by Wuppermann at its sole discretion, the Product(s) or a part thereof is found to have defects that fall within this Warranty, exclusive remedy shall be made, at the sole option and discretion of Wuppermann, by either repairing the defects or faults, or by supplying the respective correct Product or part of the Product to the Purchaser. Either Wuppermann or the Purchaser or a third party shall perform repairs, at Wuppermann's sole discretion.

B. Precondition for Warranty Handling

This Warranty is given on the condition precedent that the Product(s) is in all respects erected, operated, handled, serviced and maintained properly and is running under normal operating conditions on new sprockets as determined by Wuppermann.

(i) Exclusions: Excluded from the Warranty are, and Wuppermann shall have no responsibility for damages of any kind as a result of one of the following events: the repair and replacement of the Product(s) or any part thereto due to normal wear and tear, vandalism, accidents, negligence, or otherwise without any fault of Wuppermann; repairs, alterations or adjustments to the Product(s) performed or originated by the Purchaser or any third party without Wuppermann's prior written consent; unsuitable raw or working materials have been used when operating the Product(s); unreasonable use, misuse, abuse, accident, alteration, modification, reengineering, neglect, lack of maintenance, or use after the Product(s) is significantly worn. The Warranty described above applies only to Products manufactured by Wuppermann.

(ii) Report of Date of Installation: The Purchaser shall notify Wuppermann in writing of the exact date of installation of the Product(s); this obligation shall constitute another condition precedent for this Warranty.

C. Defective Part(s)

(i) Transportation: The Purchaser shall bear the cost and risk of transport of defective Product(s) or any part thereof to Wuppermann's facility, while Wuppermann shall bear the cost and risk of transport of repaired or replacement Product(s) or any part thereof to the port of destination. Wuppermann will pay for the ocean/ground freight using the same method of transportation and port of destination than for the original shipment. Wuppermann will not be responsible for additional duties charged for bringing a shipment of "warranted item" into any country and Wuppermann will not refund duties already paid by the Purchas-

er for the defective Product(s) or any part thereof.

(ii) Defective Part(s) and their Return: At Wuppermann's request, defective part(s) replaced in accordance with this Warranty shall be placed at the disposal for inspection and analysis of Wuppermann's service personnel. Any defective part(s) shall not be returned without authorization of Wuppermann; instead, Wuppermann will determine at its sole discretion whether the defective part(s) will be returned to Wuppermann or disposed of.

D. Payments due by the Purchaser

(i) Monies Due: Any monies due to be paid by the Purchaser to Wuppermann shall be paid in full, and Wuppermann shall credit the Purchaser for any warranty claims separately, if necessary.

(ii) Deductions: Should the Purchaser make any deductions, Wuppermann shall forthwith be discharged from the performance of its obligations under this Warranty until the Purchaser has paid Wuppermann such deduction in full.

E. Collections

Should the need arise to employ professional collection agents and/or attorneys to effect payment of any monies due under any portion of this Agreement, all such costs incidental to collection, including court costs, reasonable attorney fees, through any appeal necessary, will be borne by the Customer/Purchaser.

F. Other Exclusions

All claims beyond those allowed in these Terms and Conditions for any loss or damage from whatever cause arising, including damage to the Purchaser's property, shall be excluded and hereby waived by the Purchaser unless such claim is made based on intentional bad acts or gross negligence by the owner, officers, or executives of Wuppermann. In such case, damages shall be limited to those that are reasonably foreseeable as a result of the intentional bad acts or gross negligence.

THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESSED OR IMPLIED, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE AND ALL OTHER WARRANTIES ARISING FROM THE COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY EXCLUDED. THE REMEDIES PROVIDED HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE BY WUPPERMANN TO COMPLY WITH ITS WARRANTY OBLIGATIONS. CORRECTION OF THE NONCONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED HEREIN SHALL CONSTITUTE COMPLETE FULFILLMENT OF WUPPERMANN'S OBLIGATIONS REGARDING DEFECTIVE PRODUCT(S), WHETHER THE CLAIMS BY THE CUSTOMER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

7. INTELLECTUAL PROPERTY

Wuppermann may discontinue, without liability, delivery of Product(s) if, in its opinion and sole discretion, their use constitutes, or may create the risk of, patent, copyright, trademark or trade secret infringement.

Wuppermann makes no warranty against patent, copyright, mask work, trademark or trade secret or other infringement by Product(s) if designed to Customer's specifications, or if used in combination with non-Wuppermann supplied equipment or devices, and if a claim, suit or action is based thereon, Customer shall defend, indemnify and hold harmless Wuppermann therefrom.

8. LIMITATIONS OF LIABILITY; EXCLUSIVE REMEDY

Wuppermann will not be liable to Customer under this Agreement, whether in contract, in tort (including negligence) under any warranty or otherwise for any special, indirect, incidental or consequential loss or damage, or loss of profits or revenues even if Wuppermann has been advised of the possibilities of such damages. The remedies set forth in Sections 6 and 7 of this Agreement are exclusive, and Wuppermann's liability for damages to the Customer for any cause whatsoever, including performance or non-performance by Wuppermann or Product(s) provided hereunder, regardless of the form of the action, under any warranty or otherwise will be limited to the remedies provided therein.

9. CANCELLATION OR POSTPONEMENT BY CUSTOMER

Orders accepted by Wuppermann cannot be canceled or shipments postponed except by written notice to Wuppermann. In the event that Customer cancels or postpones an order(s) or any part thereof, Wuppermann's standard cancellation or postponement charges will apply.

10. CANCELLATION OR POSTPONEMENT BY WUPPERMANN

Should Wuppermann become aware of circumstances or otherwise be caused to anticipate that Customer will not render performance, or should Wuppermann have doubts as to Customer's creditworthiness, Wuppermann may suspend any outstanding deliveries resulting from any existing agreement with Customer or to make said deliveries only upon cash with order or by Credit Card. If Customer fails to meet such a request within a reasonable period of time, Wuppermann may cancel the Agreement and demand damages.

11. DEFAULT

A. Any of the following will constitute an act of default hereunder. Customer (i) is or becomes insolvent or a party to any bankruptcy or receivership proceeding or any similar action affecting the financial condition or property of Customer and such proceeding has not been dissolved within 30 days; (ii) makes a general assignment for the benefit of creditors; or (iii) ceases doing business in the normal course.

B. In the event an act of default shall occur, Wuppermann shall have the right to and may elect any or all of the following remedies which shall be cumulative and not exclusive: (i) Declare the particular order out of which the default arises to be immediately terminated; and (ii) Declare, at its option, all charges incurred but unpaid relative to the order to be immediately due and payable; Exercise any or all remedies specified in this Agreement or any supplement associated herewith; and (iii) Pursue each and every remedy available at law or in equity.

12. GOVERNING LAW

This Agreement and any order accepted hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of Delaware, exclusive of its conflict of laws provisions.

13. ARBITRATION AND VENUE

Except as provided below, the Parties agree to submit any disputes relating to this Agreement and the purchase of Product(s) for final resolution and determination to arbitration, applying the American Arbitration Association Rules for Commercial Disputes. The proceedings shall be held in Chicago, Illinois be in English, and any award shall be enforceable in any court of competent jurisdiction according to the laws of the state of Delaware and the United Nations Convention for the Enforcement and Recognition of Arbitral Awards unless the nature of the dispute is suitable to injunctive relief thereby affording a Party the right to pursue redress in court without proceeding to arbitration. Any dispute arising under this Agreement that cannot be arbitrated as provided herein shall be brought only in a court of competent jurisdiction in Cook County, Illinois, USA, with the Parties waiving any defense of venue or personal jurisdiction.

14. ASSIGNMENT

Customer shall not delegate any duties or assign any rights or claims under this Agreement without Wuppermann's prior written consent, and any such attempted delegation or assignment shall be void and constitute an act of default according to Section 11.

15. COMPLIANCE WITH LAWS

Customer, this Agreement and all Product(s) purchased hereunder are subject to all laws, regulations, orders or other restrictions that may now or hereafter be imposed by the government of the United States or any agency thereof, including but not limited to all regulations relating to the sale, export, re-export or redistribution of equipment.

16. GENERAL

A. If any of the provisions of this Agreement are found invalid or unenforceable under any applicable statute or rule of law, such provisions are, to that extent, deemed omitted, but this Agreement and the remainder of its provisions shall otherwise remain in effect.

B. No provision of this Agreement shall be deemed waived, amended or modified by either Party, unless such waiver, amendment or modification is in writing and signed by the Parties.

C. The waiver of one default under this Agreement shall not be deemed a waiver of subsequent or similar defaults.

D. Each order under this Agreement shall be treated as a separate contract and default by either Party arising out of a particular order shall not constitute or be deemed to constitute a default of any other order or this Agreement itself. No lawsuit, regardless of form, arising out of this Agreement may be brought more than two years after the cause of action occurs.

THESE TERMS AND CONDITIONS SHALL SUPERSEDE AND TAKE PRECEDENCE OVER ALL PROPOSALS, CUSTOMER PURCHASE ORDERS OR ANY OTHER WRITTEN OR ORAL COMMUNICATIONS BETWEEN THE PARTIES, EXCEPT AS OTHERWISE PROVIDED HEREIN. RECEIPT BY THE CUSTOMER OF PRODUCT(S) HEREUNDER SHALL BE DEEMED CONCLUSIVE EVIDENCE OF CUSTOMER'S AGREEMENT THAT THE PURCHASE, USE AND POSSESSION OF PRODUCT(S) ARE GOVERNED EXCLUSIVELY BY THESE TERMS AND CONDITIONS.