

# Zebra Skimmers Corporation

## Terms and Conditions of Sale

- 1. Agreement and Modifications.** Each purchase order relating to goods sold by Zebra Skimmers Corporation, also doing business as Uncle Earl's, ("Seller") submitted by the customer ("Buyer") is expressly conditioned upon the application of these Terms and Conditions of Sale. Any additional, contradictory or different terms contained in any request for quote, purchase order or other communication from buyer, including any such terms which purport to limit Seller's acceptance of any purchase order to the terms of purchase and sale set forth in such purchase order, shall be deemed rejected and of no legal effect. Buyer's acceptance of delivery of any or all goods supplied by Seller shall constitute assent by Buyer to these Terms and Conditions of Sale. All purchase orders are subject to the approval and acceptance by Seller at its offices in Solon, Ohio. No waiver or alteration of terms herein shall be binding unless in writing, signed by an executive officer of the Seller. No agent, salesman or other party is authorized to bind Seller by any agreement, warranty, statement, promise or understanding not herein expressed.
- 2. Price.** Unless otherwise agreed in writing by Seller, all prices are FOB Seller's plant and do not include costs of transportation. Prices stated are subject to change in the event of alterations in specifications, quantities, designs, or delivery schedules. Quotations are based on the costs to Seller as of the date of quotation, and are effective for no more than 30 days unless specifically noted otherwise on the quote. If there is a material increase in such costs between such date and the date of a purchase order, Seller reserves the right to make a corresponding adjustment to the quotation. Seller reserves the right to charge interest on all amounts not timely paid by Buyer at the rate of 1½% per month (18% per annum) or, if less, the maximum rate allowed by applicable law.
- 3. Packing, Freight and Insurance.** Prices do not include the cost of shipping or special packaging. In absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller is not responsible for insuring shipments unless specifically requested by buyer. Any insurance requested will be at buyer's expense and valuation.
- 4. Warranty.** Seller warrants goods manufactured by it will conform to all specifications and be free from defects in material and workmanship for one (1) year on all parts following the date of shipment, unless specifically noted otherwise. THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Goods sold by Seller which are not manufactured by Seller (such as motors) are not warranted by Seller, but are sold only with the warranties, if any, of the manufacturers thereof. Seller's warranty does not cover labor or other costs or expenses to remove or install any defective, repaired or replaced parts, nor does it apply to any goods which have been subjected to misuse, mishandling, misapplication, neglect (including but not limited to improper maintenance), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments), adjustments or repair performed by anyone other than Seller or one of Seller's authorized agents. Warranty claims shall be deemed waived by the Buyer unless submitted in writing to Seller within the earlier of (i) ten (10) days following the date buyer discovered, or by reasonable inspection should have discovered, any claimed breach of the foregoing warranty or (ii) twelve (12) months following the date of shipment. At Seller's request, Buyer shall send any allegedly defective parts to Seller's plant, with freight prepaid by Buyer.
- 5. Limitation of Liability.** Seller's liability (whether based upon theories of breach of contract or warranty, negligence, or strict liability) for any breach of warranty or delivery of non-conforming goods shall be limited to the following options, all of which are solely at the discretion of the Seller. First, Seller can elect to repair or replace parts found by Seller to be defective, FOB seller's plant. Second, in lieu of the first option and at its sole discretion, Seller can elect to provide a credit or a refund to Buyer for the price paid for such goods, provided, that, in no event shall Seller's liability exceed the purchase price of the goods, including any transportation or insurance charges. These Terms and Conditions of Sale shall apply to any substitute goods or repair parts.
- 6. Disclaimer of Consequential Damages.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR REVENUE AND DAMAGES OCCURRING TO ANY PERSON OR TO ANY PROPERTY, ARISING OUT OF THE USE, MISUSE, NON-USE OR NON-CONFORMITY OF, ANY DEFECTS IN, OR THE FAILURE TO SUPPLY OR TIMELY SUPPLY, ANY MATERIAL SOLD HEREUNDER, REGARDLESS OF WHETHER ANY CLAIM RELATED THERETO IS BASED ON THEORIES OF BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE.
- 7. Acceptance.** Buyer shall inspect goods immediately upon receipt of shipment. Unless Buyer provides Seller with written notice of a claim for shortage of, or defects in, the goods within forty eight (48) hours after receipt of shipment, such goods shall be deemed finally inspected, checked and accepted by buyer.
- 8. Title and Risk of Loss.** Title to, and risk of loss of, goods sold, including risks of delay in transportation and/or delivery, shall pass to Buyer upon delivery by Seller to carrier, and any and all claims for losses or damage in transit shall be made by Buyer directly with carrier.
- 9. Credit Terms; Default.** Seller reserves the right of declining to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility or if Buyer is otherwise in default in the performance of any order with Seller.
- 10. Taxes.** Unless otherwise specifically agreed by Seller, the price for the goods purchased is net and does not include sales, use, excise or similar taxes, whether federal, state or local. The amount of any such taxes applicable to the goods shall be paid by Buyer in the same manner and with the same effect as if originally included in the purchase price.
- 11. Delivery; Delays.** Shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss or expenses incurred by Buyer by reason of delays in shipment or other nonperformance of this agreement caused by or imposed by: (a) strikes, fires, disasters, riots, or acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor delay or (f) any other cause or condition beyond seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of the purchase order and/or extend any date upon which any performance hereunder is due.
- 12. Termination or Cancellation.** Orders may not be terminated or canceled by Buyer, except with Seller's written consent. Seller may, as a condition to any such cancellation or termination, require Buyer to reimburse Seller for all costs and expenses incurred, and commitments made, by Seller prior to cancellation or termination, and otherwise compensate Seller for profit on work in process and the contract value of products or parts completed and ready for shipment.
- 13. Indemnity.** Buyer shall indemnify Seller against all damage, liability, cost or expense which may be sustained by Seller on account of any claim of loss, damage or injury suffered or incurred by any customers of Buyer, or any employees, agents or invitees of Buyer, in connection with the sale, use or handling of goods supplied by Seller.
- 14. Miscellaneous.** These Standard Terms and Conditions of Sale shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of Ohio, without giving effect to the principles of conflicts or choice of law. No delay or omission by seller in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy or as a bar to, or a waiver of, any such right or remedy on any future occasion. This contract shall be binding upon and shall inure to the benefit of the successors, and assigns of Buyer and Seller. Buyer may not assign or transfer this contract, in whole or in part, except with the written consent of Seller.
- 15. Waiver of Jury Trial.** EACH PARTY WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO ANY SALE OF MATERIAL SUBJECT TO THESE STANDARD TERMS AND CONDITIONS OF SALE OR ANY MATTER RELATED IN ANY WAY THERETO.
- 16. Entire Contract.** These Terms and Conditions of Sale shall constitute the entire agreement between Buyer and Seller, and no statement, correspondence, sample or other term shall modify or affect the terms hereof.