



ZEMARC CORPORATION | QUALITY DEFINES SUCCESS  
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## ZEMARC CORPORATION TERMS & CONDITIONS

- CONDITIONS OF SALE. ZEMARC Corporation (ZEMARC)** is not a manufacturer of any goods purchased from it by a Buyer. In many instances, ZEMARC does not even handle the goods as they are shipped by the manufacturer to the Buyer. In those instances where the goods are received by ZEMARC and redelivered to the Buyer, the goods remain in the original container for delivery to the Buyer. In some instances the goods are removed from the container and subjected to minor modification by ZEMARC to satisfy the Buyer's requirements. Because of this position in the sale of goods of a manufacturer, ZEMARC is unable and unwilling to assume the legal burdens placed upon it by language in a Buyers purchase order or their order form. Therefore, Seller specifically objects to and rejects any additional terms and rejects conditions in conflict with these terms and conditions and such additional or conflicting terms shall not become part of the contract. ZEMARC believes that, in most instances, the buyer does not wish to impose upon ZEMARC its "boiler plate" terms and conditions. Therefore, all orders placed by Buyer and accepted by ZEMARC will be on the conditions that these terms and conditions will apply and the additional terms and conditions of the Buyer shall not become part of the Contract. Nevertheless, if the Buyer notifies ZEMARC by letter, separate from its purchase order, or other form, that it does desire additional terms and conditions to become part of the Contract such terms shall become part of the Contract unless ZEMARC notifies Buyer in writing that such additional terms or any part of them are not acceptable.
- TERMS.** All prices, whether herein named or heretofore quoted or contained in a manufacturers price list shall, at ZEMARC'S option, be adjusted to ZEMARC'S prices in affect at the time at shipment. Buyer shall pay ZEMARC for the goods in full, within thirty (30) days of the invoice. An interest charge of 1½% per month (18% per annum) may be assessed against all delinquent payments.
- TAXES.** All sales taxes applicable to this order and required to be collected by the seller shall be added to the invoice unless an appropriate Exemption Certificate is received. All other taxes shall be the responsibility of and paid by the Buyer.
- ORDER ENTRY.** Orders entered by telephone are accepted at the risk of the Buyer as shipments made before confirmations are received are for the benefit of and service to the Buyer. Confirming orders shall be marked "confirmations and such orders not so marked may be treated as an original order. ZEMARC will not be responsible for expenses and inconveniences incurred thereby.
- DELIVERY, SHIPMENT, RISK OF LOSS.** Unless otherwise agreed to by ZEMARC, all shipment of goods shall be FOB. manufacturers factory all shipments from ZEMARC'S plant will be made freight collect in accordance with carrier instructions supplied by the Buyer. In bound freight will be invoiced as appropriate. In the absence of such instructions, Seller will select what is, in its option, the most satisfactory routing. ZEMARC shall not be liable for either delays in deliveries or total failure to deliver due to any cause or event beyond ZEMARC'S reasonable control, including, but not limited to strikes, labor difficulties, delay or defaults of common carriers, failure or curtailment in ZEMARC'S usual source of supply or failure of a manufacturer to timely deliver goods to ZEMARC or Buyer. ZEMARC will give reasonable notice to Buyer if it appears to ZEMARC that delay in delivery will arise for any reason and upon the giving of such notice all specified delivery dates may, at the election of ZEMARC, be extended from time to time for an additional period or periods as may be reasonable. Title to and risk of loss for products passes to Buyer upon delivery to carrier.
- PARTIAL SHIPMENTS.** Seller reserves the right to make and to invoice for partial shipments.
- RETURN OF GOODS.** Buyer agrees that an order shall in no event be subject to cancellation except upon the written consent of ZEMARC, obtained in advance of such return, which consent, if given, shall specify the terms, conditions and charges upon which any such return may be made.
- CANCELLATION.** Buyer agrees that an order shall in no event be subject to cancellation or reduction or modification except by prior written consent of ZEMARC and then only when ZEMARC is fully reimbursed for its cost (including overhead and other indirect costs) for work performed, goods purchased by it or goods ordered by it to satisfy Buyers order.
- WARRANTY.** ZEMARC MAKES NO EXPRESS WARRANTIES REGARDING THE GOODS SOLD TO BUYER, NOR DOES IT MAKE ANY WARRANTIES OR MERCHANTABILITY. FURTHERMORE, ZEMARC MAKES NO WARRANTY THAT THE GOODS ARE FIT FOR A PARTICULAR PURPOSE. ANY WARRANTIES OF ZEMARC IMPLIED FROM COURSE OF DEALING OR USAGE OR TRADE ARE SPECIFICALLY EXCLUDED. This disclaimer by ZEMARC of warranties shall not operate to extinguish any warranties which are extended to Buyer by the manufacturer of the goods. Regardless of the foregoing disclaimer or warranties, if ZEMARC is, for any reason, held liable for any warranty, express or implied, such liability shall be limited solely to the replacement and repair of the goods and no more. The remedies of the Buyer, in this regard, are the exclusive and sole remedies available and Buyer shall not be entitled to receive any incidental and consequential damages as that term is defined in S2.715 of the Uniform Commercial Code. Buyer waives the benefit of any rule that disclaimer of warranty shall construe against ZEMARC, and agrees that such disclaimers herein shall be construed liberally in favor of ZEMARC.
- INFORMATION DISCLOSED.** No information or knowledge heretofore or hereafter disclosed to ZEMARC in the performance of or in connection with the terms hereof, shall be deemed to be confidential or proprietary, unless otherwise expressly agreed to in writing by ZEMARC and any such information of knowledge shall be free from restrictions, other than a claim for patent infringement, as part of the consideration hereof.
- PATENTS.** In the event any goods to be furnished under an order are to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer, Buyers agrees to hold ZEMARC and manufacturer harmless from any and all damages, costs and expenses arising from a claim that any goods furnished to Buyer by manufacturer brought for the use thereof infringes any letters patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against ZEMARC and manufacturer brought upon such claim. In the event any goods to be furnished Buyer are not made in accordance with drawings, samples or manufacturing specifications designated by Buyer, but rather is the design of manufacturer, Buyer agrees to look to the manufacturer to indemnify it and hold harmless Buyer and its customers against any damages awarded by a court of final jurisdiction in any suit or suits for the infringement of any Unites States letters patent by reason of the sale or use of the goods furnished by manufacturer and purchased by Buyer. With regard to the foregoing, Buyer shall inform ZEMARC and manufacturer as soon as practical of the charge or suit alleging such infringement and shall give the manufacturer an opportunity to take over the defense thereof.
- NON-DISCRIMINATION.** ZEMARC will comply with all provisions of Executive Order No. 11246 and of the rules, regulations and relevant orders of the Secretary of Labor.
- LAW APPLICABLE.** All sales shall be governed by the Uniform Commercial Code of California.
- RETURN POLICY.** Products are not returnable unless prior written approval is extended by ZEMARC. Special ordered items, non-stock and products that require conversion are NOT returnable.