

# **KNOTTS COMPANY, INC. and KNOTTS/NEW YORK, INC. TERMS AND CONDITIONS**

## **GENERAL**

The following Terms and Conditions shall be incorporated by reference into every agreement for the purchase and sale of Seller's products by Purchaser entered into now and in the future, whether or not specific reference is made thereto in future agreements. Any acceptance by Seller contained herein or in any accompanying document or future documents is made expressly conditional upon the Purchaser's assent to the terms which are different from, in addition to or vary the terms contained in the Purchaser's purchase orders or requests for quotation. Such assent by Purchaser shall be deemed to occur upon the failure of the Purchaser to object in writing specifically to such term or terms within fourteen (14) days from the receipt of any invoice or proposal from Seller. Any terms and conditions contained in any order, request for quotation or acceptance, as applicable, received from Seller now or in the future which are different from or in addition to or which vary from Seller's terms and conditions shall not be binding upon Seller, and Seller hereby objects thereto.

## **CHANGES**

Prior to the date of delivery of any product or products here under, the Purchaser shall have the right to make changes in its order provided that Seller receives written notice of the desired changes and accepts the same and provided further that the Purchaser accepts the additional charge therefor as determined by Seller. Changes which interfere with or alter Seller's production schedules will not be acceptable unless the time for performance is extended for such period as deemed necessary by Seller. Failure of Seller to accept a Purchaser's request to change its purchase order shall not be cause for Purchaser's cancellation of its order except upon payment of a cancellation charge to be determined by Seller.

## **CANCELLATION**

- (a) Seller shall have the absolute rights to cancel this Agreement upon breach thereof by the Purchaser, failure by the Purchaser to make any payment required by this Agreement, or the insolvency or bankruptcy of the Purchaser.
- (b) A purchase order or any part thereof which is hereby accepted by Seller may not be cancelled unless and until Seller receives written notice of the cancellation, has determined the additional charge to be made and the same has been accepted and paid by the Purchaser. Upon receipt of a notice of cancellation, Seller shall be entitled to take whatever action it deems necessary and advisable to minimize cancellation charges.

## **WARRANTY**

- (a) Seller does not manufacture the products that it sells and/or assembles. Those products that it sells are covered only by the warranty provided by Seller's vendor, the product manufacturer and/or any other third party that supplied the product. Seller will furnish copies of such warranties upon request. Seller cannot and does not warrant that its products are delivered free of the rightful claim of any third person by way of infringement or the like.
- (b) For products assembled by Seller, Seller warrants only that the products are free from defects in assembly under normal use and service for a period of one year after shipment thereof to the original purchaser.
- (c) *THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE HEREOF, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.*
- (d) Seller reserves the right to inspect products claimed defective under warranty either at the Purchaser's location or at the Seller's place of business. A defective product is not to be returned to Seller's plant unless authorized by Seller. Products so returned shall be returned to Seller's plant, freight prepaid. Any product proving defective due to faulty assembly within one year from date of shipment will be replaced or repaired free of charge, F.O.B. Seller's plant. Seller assumes no liability for labor charges incidental to the adjustment service, repairing removal or replacement of the product or other costs, or for the expense of repairs made outside of its factory except when made pursuant to Seller's prior written consent. Seller, at its option, may ship a replacement or replacements immediately under standard billing and make warranty adjustment after inspection of the defective product by means of credit memorandum.

## **DELAYS**

Seller shall not be liable for damages for delays in performance due to circumstances beyond its reasonable control, including without limiting the generality of the foregoing, any priority system established by any agent of the United States Government, fires, floods, storms, and other acts of God, accidents, strikes, insurrections, war, shortage of materials, lack of transportation and failure of performance of subcontractors and/or suppliers for similar reasons. Failure of Seller to perform for these reasons aforesaid shall not be grounds for Purchaser's cancellation of its order; but the delivery date shall be extended accordingly.

## **LIMITATION OF LIABILITY/INDEMNIFICATION**

- (a) In no event will Seller be liable to Purchaser for damages in an amount that exceeds the Total Price of the products sold hereunder.
- (b) Seller shall not be liable to Purchaser for consequential damages.
- (c) You will hold us harmless and indemnify us against all liability if the liability comes from any use of the products sold hereunder, unless the liability is ours under "WARRANTY" above. You will also hold us harmless and indemnify us against any claim that the assembly or use of the products sold hereunder infringes on the legal rights of a third party. In addition, if there is any defect in the manufacturing specifications or any parts or raw material supplied or specified by you for use in the assembly of the product hereunder, you will hold us harmless and indemnify us.

## **MISCELLANEOUS**

- (a) This Agreement may not be assigned or otherwise transferred by Purchaser without the prior written consent of Seller and any such assignment or transfer without such prior written consent shall be null and void and of no force or effect whatsoever.
- (b) Seller's failure to insist, in one or more instances, upon the performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of its right to such performance or the future performance of such term or terms and Purchaser's obligation with respect thereto shall continue in full force and effect.
- (c) Any notice or other communication required or permitted here under shall be sufficiently given if sent in writing by registered or certified mail, postage prepaid, to the other party thereto at its respective address first above written. Any such notice, if so mailed, shall be deemed to have been received on the third business day following such mailing. Either party hereto may change its address for notice purposes by written notice to the other party.
- (d) The paragraph headings in this Agreement are used for convenience only. They form no part of this Agreement and are in no way intended to alter or affect the meaning of this Agreement.
- (e) This Agreement may be amended at any time by mutual agreement of the parties hereto by an endorsement to this Agreement signed by each of them.
- (f) The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions.
- (g) If with Knotts Company, Inc., this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. If with Knotts/New York, Inc., this Agreement shall be governed by and construed in accordance with the laws of the State of New York.
- (h) We hereby certify that these goods were produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act as amended and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.
- (i) Customer agrees that any receivable credit balance will be applied within one (1) year of its issuance. If not applied or requested within one (1) year, any receivable balance remaining will be subject to cancellation and The Knotts Company shall have no further liability.
- (j) Claims must be reported within ten (10) days. No credit will be issued on goods held over thirty (30) days or returned without our authorization.
- (k) Freight includes shipping and handling charges.

## **TAXES**

All applicable federal, state or local sales, use, or excise taxes are the responsibility of the Purchaser and shall be in addition to the price or prices stated on the front side of this document unless otherwise specifically stated. Seller shall have the right to invoice separately any such tax as may be imposed at a later time. Applicable tax exemption certificates must accompany any order to which the same applies.

## **PAYMENT TERMS**

- (a) CASH PAYMENT: Net 30 days. A service charge of 1-1/2% per month (18% annual rate) will be charged on balances which are over 60 days. A \$25.00 fee will be charged for each returned check.
- (b) CREDIT CARDS: We accept American Express, VISA and MASTERCARD as payment at the time of shipment.
- (c) F.O.B. - Shipping Point, including a nominal handling charge, unless otherwise stated.