

# FIBOX INC.

## TERMS AND CONDITIONS

**1. SELLER'S TERMS AND CONDITIONS.** The following terms and conditions cover all sales of products and rendering of services by FIBOX INC., a Maryland corporation ("Seller"). These terms and conditions will supersede all previous communications, agreements or contracts, written or verbal, and no understanding, agreement, term, condition or trade custom at variance herewith will be binding on Seller. No waiver, amendment or modification of the terms and conditions hereof will be effective unless in writing and signed by an officer of Seller. If these terms and conditions are attached to Seller's confirmation of purchase order, then these terms and conditions together with Seller's confirmation of purchase order shall constitute the entire Agreement between the parties and are hereinafter referred to collectively as the "Agreement."

No purchase order or other ordering document, terms and conditions, or other document supplied by the Customer will add to, vary, modify or amend these terms and conditions unless signed by an officer of Seller.

**2. CREDIT AND TERMS OF PAYMENT.** Unless otherwise specified, terms of payment are net cash, thirty (30) days after date of invoice. Any invoice not paid within thirty (30) days is subject to a late payment fee of one and one-half percent (1 1/2%) per month, or, if such rate exceeds that permitted by applicable law, then the highest lawful rate. Customer will also reimburse Seller for all collection costs on any delinquent accounts, including, without limitation, attorneys' fees and court costs. Any overdue payment must be paid before additional shipments are made, and Seller reserves the right to cancel any order or refuse to accept or fill any order then outstanding until payment of overdue amounts are paid. In the event that Seller, in its sole and absolute discretion, deems Customer's credit to be unsatisfactory, Seller shall have the right to (a) limit the amount of credit which Seller extends to Customer, and delay the delivery of products and/or rendering of services based upon such limitations; (b) require full or partial payment in advance, (c) deliver products to Customer C.O.D. or require payment to be secured by letters of credit, (d) require written guarantees or payment satisfactory to Seller, or (e) cancel or refuse to accept or fill any order from Customer then outstanding or thereafter placed.

**3. TAXES.** Unless specifically so designated, prices do not include sales, use, excise, value-added or similar taxes applicable to sales or services hereunder, or their use by Customer or Customer's own customers. Customer will be responsible for paying all such taxes, or, if Seller pays such taxes, invoices will be increased accordingly.

**4. SHIPMENT.** All shipments will be made by common carrier to customers F.O.B. point of shipment. Risk of loss or damage will pass to the Customer upon delivery by Seller to the carrier. Prices quoted are based on current freight rates, and prices are subject to adjustment in the event that a change in such rates affects Seller's cost of performance hereunder. Transportation costs are the responsibility of the Customer; freight charges will be prepaid and charged by Seller. Customer shall examine goods promptly upon receipt of delivery from the carrier. Customer shall advise the carrier of any damages or shortages prior to acceptance of goods and, except for any latent defects, shall advise Seller of any claims with respect to shortages, damages or discrepancies within ten (10) days after receipt thereof. Failure to so advise the carrier and the Seller shall relieve Seller from any claim by Customer for shortages or damages and shall constitute a waiver by Customer of all claims with respect to said goods.

**5. RETURN POLICY.** Seller has a general "no return policy," except for defective goods. No return or cancellation of orders already accepted will be permitted unless prior written authorization of Seller is obtained prior to shipment. Returns may be subject to a return charge, and Customer will be responsible for all transportation charges.

**6. EXCUSABLE DELAYS.** Seller's delivery dates are approximate and are based upon prompt receipt of all necessary information from Customer. The timing of delivery of products and services is contingent upon acts of God, floods, fires, storms, strikes, delays in transportation, governmental restrictions, prohibitions, and regulations, inability on account of a cause beyond the reasonable control of Seller to obtain necessary materials, components, services or facilities, or other interferences beyond Seller's reasonable control, to the extent that the same prevent or delay the performance of Seller's obligations contained hereunder. In the event of such a delay, the shipping date shall be extended for a period equal to the time lost by reason of such delay.

**7. GRANT OF SECURITY INTEREST.** All Products shall remain the property of Seller until invoice therefor has been paid in full. As security for payment of all prices, fees and other amounts due by Customer hereunder and performance of all of Customer's other obligations under this Agreement, Customer hereby grants to Seller and Seller hereby retains, a security interest under the applicable provisions of the Maryland Uniform Commercial Code in all property, both tangible and intangible, sold or supplied to Customer, including all proceeds (cash and non-cash, including insurance proceeds), products, substitutions, renewals and replacements thereof. Seller has the right to file this Agreement as a financing statement or continuation statement in the applicable public records, and Customer agrees to execute any documents required by Seller to evidence or perfect the foregoing security interest, including individual blanket financing statements, continuation statements, chattel mortgages, or similar instruments, with respect to the security interest created hereby. Seller is hereby appointed Customer's attorney-in-fact to do all acts and things which Seller may deem necessary or desirable to perfect and continue perfecting the security interest created hereby. Seller shall have all the rights of a secured creditor under the Uniform Commercial Code or any similar law that may be applicable.

**8. FIBOX LIMITED WARRANTY.** Seller warrants to Customer that all products and services provided hereunder will be in accordance with specifications and substantially free from defects in material and workmanship under normal use and service for a period of one year from date of shipment. This warranty will not, however, apply to any product to the extent the same is, after delivery: (a) repaired or altered outside of Seller's or manufacturer's factory; or (b) subject to misuse, neglect, accident or improper storage, installation, assembly, repair or handling; (c) put to other than normal use or service; or (d) used, maintained, installed, assembled, stored, handled or repaired under conditions which exceed the designed capabilities or in a manner which is not in compliance with Seller's recommendations or with applicable laws, regulations or codes. Seller makes no representation or warranty as to the suitability or compatibility of any product or service with Customer's own equipment, materials, components or products; and Seller will in no event have any responsibility for the design, performance, use, defect or malfunction of Customer's own equipment, materials, components or products. Seller's sole obligation, and Customer's sole remedy, under the foregoing warranty will be the repair or, at Seller's sole option the replacement, of any product which may be determined by Seller to be defective, provided that Customer shall notify Seller in writing of such defects within the one year warranty period set forth above; and, provided further that Customer will ship such products to Seller's office for repair or replacement, if necessary. THIS PARAGRAPH SETS FORTH THE EXCLUSIVE REMEDIES FOR CLAIMS BASED ON DEFECT IN OR FAILURE OF PRODUCTS OR SERVICES, WHETHER THE CLAIM IS IN CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING

SELLER'S NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND HOWEVER INSTITUTED. THE FOREGOING WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES BY SELLER TO CUSTOMER, AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, FOR ANY PRODUCT OR SERVICE SOLD OR FURNISHED HEREUNDER, AND SELLER DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY CATALOGUE, SAMPLE OR MODEL IS FOR ILLUSTRATIVE PURPOSES ONLY AND SHALL NOT BE DEEMED TO CREATE AN EXPRESS WARRANTY, AND NO AFFIRMATION OR PROMISE OR DESCRIPTION, OR CATALOGUE, SAMPLE OR MODEL SHALL BE DEEMED PART OF THE BASIS OF THE BARGAIN.

**9. LIMITATION OF DAMAGES.** In no event, whether as a result of breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise, shall Seller's liability to Customer for any loss or damage arising out of, or resulting from this Agreement, or from its performance or breach, or from the products or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim, and any such liability shall terminate upon the expiration of the warranty specified in Section 8 entitled "Warranties." Any such claim of liability must be timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations, but in no event later than one year from the termination of the said warranty. IN NO EVENT SHALL SELLER, ITS AFFILIATES, OFFICERS, AGENTS OR EMPLOYEES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING FROM THIS AGREEMENT OR THE PRODUCTS OR SERVICES PROVIDED HEREUNDER, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFITS OR REVENUES, INTERRUPTION OF BUSINESS, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, MATERIALS, COMPONENTS OR PRODUCTS, DAMAGE TO ASSOCIATED EQUIPMENT, MATERIALS, COMPONENTS OR PRODUCTS, COST OF SUBSTITUTE PARTS, OR CLAIMS OF CUSTOMER'S CUSTOMERS FOR SUCH DAMAGES. CUSTOMER'S SOLE REMEDY FOR ANY LIABILITY OF SELLER OF ANY KIND IS LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS OR SERVICES AS PROVIDED IN THE IMMEDIATELY PRECEDING PARAGRAPH. CUSTOMER'S SOLE RECOURSE FOR DAMAGES IN CONNECTION WITH OR ARISING FROM THIS AGREEMENT OR THE PRODUCTS OR SERVICES PROVIDED HEREUNDER, WHETHER AS A RESULT OF BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING SELLER'S NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL BE AGAINST SELLER, AND CUSTOMER AGREES THAT NEITHER THE MANUFACTURER NOR SELLER'S AFFILIATES, OFFICERS, EMPLOYEES, STOCKHOLDERS OR AGENTS SHALL HAVE ANY LIABILITY THEREFOR.

### **10. INTELLECTUAL PROPERTY.**

10.1. All process information, drawings, specifications, instruction manuals, catalogs and other documents furnished by Seller to Customer for the products sold hereunder shall remain the property of Seller, or its affiliates, as the case may be, and are furnished subject to the condition that Customer use the same only for operation, maintenance and repair of the products and that Customer shall not at any time copy, duplicate, disclose or publish such information. Neither this Agreement nor the purchase or use of Seller's products by Customer will be construed to grant Customer any right, license, sublicense, title or interest in or to any of Seller's or its affiliates' patents, trade names, trademarks, trade secrets, copyrights and other proprietary rights and information or other intellectual, proprietary or industrial property pertaining to the Seller or its products or affiliates, all of which are acknowledged by Customer to be the sole and exclusive property of the Seller or its affiliates, as the case may be.

10.2. Seller will defend Customer against any claim that the products sold hereunder infringe any patent of the United States, provided that Seller is given prompt notice of such claim and is given information, reasonable assistance and sole authority to defend or settle the claim. In the defense or settlement of the claim, Seller shall, in its reasonable judgment and at its option and expense: (a) obtain for Customer the right to continue using said products; (b) modify said products to render them non-infringing; (c) replace said goods with non-infringing products; or (d) refund the purchase price and the transportation costs of said products. Seller will not be responsible for any compromise or settlement made without its written consent. Seller shall not have any liability to the extent the alleged infringement is based on (a) the use or application of the products in combination with other products, (b) any modification of the product by anyone other than Seller, or (c) use of the product other than in accordance with Seller's recommendations, and Customer shall indemnify Seller for any of the foregoing, including but not limited to actual attorneys' fees and costs. THE REMEDIES SET FORTH IN THIS PARAGRAPH 10.2 SHALL BE CUSTOMER'S EXCLUSIVE REMEDY AGAINST SELLER WITH RESPECT TO PATENT INFRINGEMENT BY ANY PRODUCTS SOLD HEREUNDER.

**11. INDEMNIFICATION.** Customer shall indemnify and hold Seller, its officers, directors, employees, agents, affiliates, successors and assigns harmless from and against all claims, liabilities, losses, damages, costs and expenses sustained by them (including court costs and attorneys' fees) arising out of or in any way connected with the breach of this Agreement by Customer or any of its affiliates, employees, officers or agents.

**12. WAIVER OF TRIAL BY JURY.** Seller and Customer hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto, against the other on, or in respect of, or any matter whatsoever arising out of or in any way connected with this Agreement, the relationship between Seller and Customer hereunder, and the Customer's use, purchase, and resale of any products purchased from Seller, and/or any claim of injury or damage.

**13. MISCELLANEOUS.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, personal representatives and other legal representatives, successors and assigns, except that Customer may not assign its rights or obligations hereunder without the prior written consent of Seller. No failure or delay of Seller to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies. If any provision hereof shall for any reason be held invalid or unenforceable by any court or other tribunal of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein, provided that the court or other tribunal making such finding of invalidity or unenforceability shall modify the scope or extent of the offending provision to the maximum extent allowable under the law to make the same enforceable. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland. The parties hereby consent to the jurisdiction and venue of the federal and state courts of the State of Maryland with respect to any matter arising from this Agreement.