

## Terms and Conditions of Sale, Ensinger Inc. ("Ensinger")

### **I. Terms of payment**

Unless otherwise expressly provided, terms are Net Cash 30 days after date of invoice. Invoices will be dated the day of shipment.

### **II. Credit**

credit. cash, at Accounts will be opened only with firms or individuals on approved Ensinger reserves the right to decline to make deliveries, except for the sale discretion of Ensinger.

### **III. Interest**

Ensinger reserves the right to charge interest at the rate of 1 1/2% per month (18% annually) beginning on the first day following the date on which payment is due.

### **IV. Freight**

1. All shipments shall be Ensinger "EX WORKS". Risk of loss in transit from damage or otherwise is on Buyer.

2. All claims are to be filed by the Buyer. Risk of loss in transit Ensinger must be notified of any claim involving UPS (United Parcel Service) within 10 days of the shipment date. Failure of the above may result in the Buyer being responsible for that specific freight charge.

### **V. Custom product production orders**

Custom product production orders are defined as products that require specific production operations and are products not normally stocked by Ensinger as designated by its literature and/or price sheets. For these custom products, Ensinger reserves the right to ship and subsequently invoice a quantity deviation of plus or minus 10% of the quantity of the product stated on the customer's purchase order. With this quantity deviation, Ensinger will consider that the order for this custom product is completed.

### **VI. Taxes**

Any tax imposed by any present or future law of Federal, State, or other taxing authority, on the manufacture or sale of the articles covered herein, shall be added to the amount to be paid by the Buyer.

### **VII. Delivery**

Every effort will be made to fill orders within the estimated time. Ensinger shall not be responsible for delays or late delivery when caused by acts of God, acts of government, strikes, accidents, carriers, fire, wind, and water, war or civil commotion, deliveries of others furnishing material and such delays as occur without fault of Ensinger or for causes beyond its control. Ensinger shall not be liable for special, indirect or consequential damages caused by such delay or late delivery. Failure to make deliveries at the time designated by the Buyer shall not give the Buyer the right of cancellation nor relieve the Buyer of responsibility for payment. Estimated completion of tooling date will not apply when changes in specification or design are requested by the Buyer.

### **VIII. Change or cancellation**

All orders are accepted on the condition that they are not subject to change or cancellation without acceptance by Ensinger and Ensinger will be reimbursed for all work in process, material, engineering and any other change or cancellation charge incurred on the basis of cost to Ensinger including handling and overhead costs.

### **IX. Disposition of defective products**

If products are defective or fail to meet specifications accepted by Ensinger, buyer shall immediately notify Ensinger stating full particulars in support of his claim. Ensinger at its opinion, may request return of defective parts before issuing credit or replacement. Any return of defective parts must be received by Ensinger within one month of shipment. Ensinger will either replace the products shipped or adjust the matter fairly and promptly. Ensinger shall not be responsible for any special indirect or consequential damages. There are no other warranties or representation either expressed or implied except as provided for in the within agreement. The warranties set forth herein are in lieu of any and all warranties ex-

pressed or implied including the warranties of merchantability and fitness.

### **X. Tooling**

Tooling specifically charged to Buyer will be held by Ensinger for the exclusive use of the Buyer. Buyer cannot remove this tooling from Ensinger's premises. This tooling will be kept in good condition for production, reasonable wear and tear excepted. Charges will be made for repairs to tooling necessitated by production beyond their normal, useful life. Tooling charged to the Buyer is the property of the Buyer and is not insured by Ensinger against risk or loss due to fire or other such damage.

### **XI. Guaranteed payment for questionable tooling**

If Ensinger deems that the manufacture of the product is such that, in spite of Ensinger best efforts, the tooling produced may not be capable of attaining or sustaining production of a functional product, Ensinger will accept a contract for that tooling only on the Buyer's guarantee that the contract will be paid in full regardless of the results.

### **XII. General**

Any failure by Ensinger to insist upon a strict performance of any of the terms and conditions herein shall not be deemed a waiver of any rights or remedies that Ensinger may have, and shall not be deemed a waiver of any subsequent breach or default in the terms and conditions herein contained. No provision of this agreement shall be deemed to have been waived by Ensinger unless such a waiver be in writing and signed by an officer of Ensinger.