

The Vollrath Company, L.L.C.

TERMS AND CONDITIONS OF SALE

- 1. Governing Provisions and Cancellation.** All sales by The Vollrath Company, LLC ("Seller") are subject to these terms and conditions, and are expressly conditioned upon assent to these terms and conditions. No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing. Seller hereby objects to any such additional or different terms, and notifies buyer that Seller is unwilling to sell on any terms other than these terms and conditions. No order may be cancelled or altered by buyer except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. **EACH CONTRACT OF SALE, INCLUDING THESE TERMS AND CONDITIONS, SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER, AND SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS, OF THE STATE OF WISCONSIN. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** There are no conditions affecting the parties' agreement which are not expressed in these terms and conditions.
- 2. Credit Approval; Payment Terms.** All payment terms set forth in this document are subject to Seller's approval of buyer's credit, in Seller's discretion; and if such approval is withheld, payment shall be due in advance of Seller's performance. Payment terms are 1% cash discount, 10 days, net 30 days D.O.I.. Cash discount computed from date of invoice and not receipt of goods. Interest will be charged at the lesser of (i) 12% per year, or (ii) the highest rate permitted by applicable law, on accounts more than 30 calendar days past due. If production or shipment of completed goods, or other Seller performance, is delayed by buyer, Seller may immediately invoice, and buyer shall pay, the percentage of the purchase price corresponding to the percentage of completion; in addition, buyer shall compensate Seller for storage of completed goods or work in process during any such delay, whether stored at Seller's facility or an independent storage company's facilities.
- 3. Taxes and Other Charges.** Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and buyer shall be paid by buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes or other charges, buyer shall reimburse Seller therefor on demand.
- 4. Delivery and Freight.** All items are delivered FOB point of origin. Except as provided below, orders for \$2,400.00 NET or more shipping to one location will be shipped PREPAID by Seller. Transportation charges on smaller orders shall be collect or, at Seller's discretion, upon a customer's request, prepaid and invoiced. LIFT-GATE equipment charges are the responsibility of the customer. Lift-Gate equipment must be requested on the Purchase Order so proper delivery arrangements can be made with the carrier. Lift-Gate charges will be based on the charges quoted by the carrier. Charges for the lift-gate equipment will be added to the invoice. For ultimate destinations outside of the U.S., all items are ex works Seller's loading dock (as the latter shipping term is defined in Incoterms 2000). Delivery of products to the carrier shall constitute delivery to buyer; and regardless of shipping terms or freight payment, buyer shall bear all risk of loss or damage in transit. Seller reserves the right to make delivery in multiple shipments, unless otherwise expressly stipulated herein; all such shipments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries.
 - a. Custom Equipment and Milestone Equipment**

Quoted prices DO NOT include freight or crating charges and DO NOT qualify for \$2,400.00 Net Prepaid by Seller. Optional crating charges will be added to the invoice. Product will be shipped ex works Seller's loading dock.
 - b. Minimum Order Amount and Drop Ship Orders**

The minimum order will be One Hundred Dollars (\$100.00) NET shipping to one location. Seller reserves the right to refuse requests to drop ship orders for the same products to multiple locations even if each drop ship order meets the \$100.00 minimum.
 - c. Case Lot**

Merchandise purchased in full case lots will speed up shipments. Prices shown are for full case lot quantities. A \$3.00 net fee will be charged for each line on any purchase order that is not for full case quantities. The \$3.00 broken case upcharge will appear as a separate line/charge directly after the line that has the broken case quantity. Cases will not be broken for any products noted with a pound sign (#) after the case lot.
 - d. Custom Smallwares**

Custom Smallwares orders are completed with over/under shipments, not to exceed plus or minus 10% of the original order quantity.
- 5. Claims, Delays and Force Majeure.** Claims for shortages or other errors in delivery must be made in writing to Seller within 10 calendar days after receipt of shipment; and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by buyer. Claims for loss of or damage to goods in transit must be made to the carrier, and not to Seller. **OUR RESPONSIBILITY FOR SHIPMENT CEASES WITH ACCEPTANCE BY CARRIERS.**

All delivery dates are approximate. Delay in delivery of any shipment shall not relieve buyer of its obligations to accept remaining shipments. Further, Seller shall not be liable for any losses or damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including but not limited to any act of God, act of buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, act of terrorism, riot, delay in transportation, or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason shall be rescission of its agreement to purchase.
- 6. Changes.** Seller may at any time make such changes in design and construction of products, components or parts as Seller deems appropriate, without notice to buyer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.
- 7. Warranties.** Seller warrants any smallwares provided hereunder to be free from nonconformity to any attached specifications, and free of defects in materials and workmanship, appearing within 60 days. Seller also warrants any equipment provided hereunder to be free from nonconformity to any attached specifications, and free of defects in materials and workmanship, appearing within 18 months from date of shipment or 12 months from date of purchase by the end user, whichever ends earlier. If within such periods any such applicable goods shall be proved to Seller's satisfaction to be defective, the affected part will be repaired or replaced free of charge, F.O.B. buyer's original destination or, for customers outside of the U.S., ex works Seller's loading dock (as the latter shipping term is defined in Incoterms 2000), or Seller will refund the purchase price of the affected part. Such repair, replacement or refund (whichever Seller determines, in its discretion, to provide) shall be Seller's sole obligation and buyer's exclusive remedy for any deficiency in

Continued on next page

goods furnished hereunder, and shall be conditioned upon buyer's return of such goods to Seller, F.O.B. Seller's loading dock or, for customers outside of the U.S., DDP Seller's loading dock (as the latter shipping term is defined in Incoterms 2000). Any parts repaired or replaced under this warranty are warranted only for the balance of the warranty period on the part that was repaired or replaced. Seller gives no warranty on any goods damaged by accident, carelessness, improper installation, lack of proper setup or supervision (when required) or installed or operated in any manner contrary to the installation and operating instructions.

Seller warrants that any out of warranty repair services it provides hereunder will be performed in a manner consistent with customary practice in its industry. Should a failure to conform to this warranty appear within thirty 30 calendar days after completion of any repair services, Seller shall, if promptly notified thereof in writing, either perform the repair services again, properly and without charge, or refund the price charged for such repair services. Such reperformance or refund (whichever Seller determines, in its discretion, to provide) shall be the buyer's exclusive remedy and the Seller's sole liability with respect to any deficiency in repair services furnished hereunder. Seller gives no warranty on any repair services performed by unauthorized personnel or unauthorized service agencies.

THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

8. **Returns.** Return Authorizations must be requested for all returns. Product returned without prior authorization from Seller's Sheboygan or North Carolina offices WILL BE REFUSED.
- a. Requests for returns of merchandise (other than defective merchandise) must be made within **60 DAYS of the VOLLRATH INVOICE DATE. PURCHASE ORDER NUMBER or VOLLRATH INVOICE NUMBER MUST BE PROVIDED when requesting the authorization. NO RETURN AUTHORIZATION will be issued unless Purchase Order Number or Vollrath Invoice Number is provided.**
 - b. A restocking charge applies as follows:
 1. Merchandise less than \$100 value - \$25 restocking charge.
 2. Merchandise more than \$100 value - 25% restocking charge.
 - c. Return shipment must be shipped prepaid to Vollrath.
 - d. Return Authorization Number must be marked on all returned cartons.
 - e. Returns accepted only on current merchandise found in original carton and in new and saleable condition. Merchandise returned that is in partial case lots, used, obsolete or shelf-worn will be disposed of and credit **WILL NOT** be issued.
 - f. The following items may not be returned: (1) Personalized/Imprinted Racks, (2) SIGNATURE SERVER[®] products, (3) product purchased in broken case quantities, (4) custom plate covers, (5) Affordable Portable[™] products, (6) ServeWell[®] products, (7) Modular Drop-ins, (8) breath guards, (9) Cayenne[®] Heat Strips and Light Strips, (10) Custom Graphic Food/Soup Merchandisers, (11) custom countertop equipment, (12) other custom equipment (including Food Courts, Bars, Merchandising Carts and Kiosks), (13) Milestone Equipment and (14) Custom Smallwares.
9. **Patents, Trademarks and Copyrights.** Seller will, at its own expense, defend any suits that may be instituted by anyone against buyer for alleged infringement of any United States patent, trademark or copyright relating to goods or services provided by Seller, and pay any final damage award therein, provided buyer shall have made all payments then due hereunder, shall give Seller immediate notice in writing of any such suit, shall transmit to Seller immediately upon receipt all processes and papers served upon buyer, and shall permit Seller, through its counsel, to defend or settle the same either in the name of buyer or in the name of Seller, giving Seller all needed information, assistance and authority to enable Seller to do so. Further, if the result of any such suit is a determination or acknowledgement of infringement, Seller shall, at Seller's option (a) obtain for buyer the right to continue to use the goods or products of the services purchased from Seller, or (b) replace the same with non-infringing goods or services, or (c) modify such goods or services so that they are non-infringing, or (d) remove such goods or products of services and refund to buyer the undepreciated portion of the purchase price, determined on the basis of a five-year useful life.
- To the extent that any goods or services that Seller furnishes to buyer are manufactured in accordance with drawings, designs or specifications proposed or furnished by buyer, Seller shall not be liable, and buyer shall indemnify and hold harmless Seller from and against any and all losses, liabilities, damages, claims and expenses (including but not limited to Seller's reasonable attorneys' fees and other costs of defense) incurred by Seller as a result of any claim of patent, trademark, copyright or trade secret infringement, or infringement or any other proprietary rights of third parties.
10. **Consequential Damages and Other Liability; Indemnity.** Seller's liability with respect to the goods or services sold hereunder shall be limited to the warranty and indemnity provided in sections 7 and 9 of these terms and conditions of sale and, with respect to any other breaches of its contract with buyer, shall be limited to the contract price. **SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO GOODS OR SERVICES SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, down-time, lost good will, cost of capital, cost of substitute goods or services, or for any other types of loss of economic advantage, or for claims of buyer's customers or any third party for any such damages, costs or losses. **SELLER SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL, INDIRECT AND CONTINGENT DAMAGES WHATSOEVER.**
- Buyer shall indemnify and hold harmless Seller from and against any and all losses, liabilities, damages and expenses (including but not limited to attorneys' fees and other costs of defense) that Seller may incur as a result of any claim by buyer or by buyer's customers or by any third party arising out of or in connection with the goods or services sold hereunder, including but not limited to any such claim based upon the negligence of Seller in designing, manufacturing, performing and/or selling such goods or services, unless such losses, liabilities, damages or expenses are ultimately determined to be attributable solely to the willful misconduct of Seller.
11. **Prices.** All prices are subject to change without notice; and orders placed for future delivery will be invoiced at the prices in effect at time of shipment. Due to price and exchange rate fluctuations on imported merchandise, all prices for imports are subject to change at time of shipment.
12. **Technical Information.** Any sketches, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models or samples, or any design or production techniques revealed thereby, shall be made without the express, prior written consent of Seller.
13. **Tools.** Any dies, jigs or tools that Seller manufactures or acquires in connection with its performance hereunder shall remain the property of Seller, notwithstanding any charges to buyer therefor. Any such charges convey to buyer the right to have the tools, dies or jigs used by Seller for performance hereunder, but do not convey title or right of possession or any other right.