

# Auburn Ball Bearing Terms and Conditions of Sale

1. **SELLERS OFFER.** Notwithstanding any contradictory terms and conditions which may appear on Buyer's forms, the shipment and/or delivery of the goods and/or services made the subject of the invoice and the mailing and or/ delivery of this invoice shall not constitute an acceptance by the Seller of any prior written or oral offer by the Buyer which contained terms and conditions different from or additional to those set forth below. Seller's acceptances of any such offer constitute confirmation of Buyer's acceptance of the terms and conditions set forth below.

## **STANDARD LIMITED WARRANTY**

2. (a) Service Warranty and Disclaimer. Auburn Ball Bearings warrants to its original customer that all services provided by Auburn Ball Bearings will be performed in accordance with generally accepted industry standards and will be provided in a manner consistent with the level of skill ordinarily exercised by Auburn Ball Bearings in connection with its own work on the date such services are provided. Auburn Ball Bearing's liability for any breach of this warranty and customer's sole remedy will be limited to correction or reperformance of services by Auburn Ball Bearings at no additional charge, subject to the disclaimer and limitation of remedies set forth below. (b) Disclaimer and Limitation. THE WARRANTIES, REMEDIES AND/OR DISCLAIMER OF WARRANTIES AND REMEDIES AS SET FORTH AND DESCRIBED ABOVE ARE EXCLUSIVE AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITHOUT LIMITATION, ANY STATUTORY WARRANTIES OR ANY WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ALL SUCH WARRANTIES BEING SPECIFICALLY DISCLAIMED AND EXCLUDED. IN NO EVENT SHALL AUBURN BALL BEARINGS BE LIABLE FOR SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER REGARDLESS OF HOW ARISING. In case of any products, supplies, components or devices which are not manufactured by Auburn Ball Bearings, Auburn Ball Bearing's sole obligation shall be limited to making available to customer any existing applicable manufacturer's warranties pertaining to such products, supplies, components or devices, to the extent Auburn Ball Bearings can legally do so. In case of a system assembled by Auburn Ball Bearing involving both products and services, Auburn Ball Bearing's total liability shall not exceed, in the aggregate, ten percent (10%) of the total cost of such system.
3. **ENTIRE AGREEMENT.** No agent, employee or representative of the Seller has any authority to bind the Seller to any affirmation, representation or warranty concerning the goods sold under this contract, unless such affirmation, representation or warranty is specifically included within this agreement. No modification or alteration of the foregoing disclaimer of warranty and limitation of remedies provisions shall be valid or enforceable unless set forth in a separate document issued and executed by the Seller.
4. **INDEMNIFICATION.** In the event Buyer fails to disclaim any warranty with respect to any articles sold hereunder, Buyer shall indemnify and hold Seller harmless from any and all liability, cost and expense to which Seller may be subjected as a result of Buyer's failure to so disclaim its express or implied warranties.
5. **RISK OF LOSS; TITLE.** The goods sold hereunder shall be at the risk of the Buyer upon delivery by the Seller until payment in full by Buyer.

6. **DELAYS BEYOND SELLER'S CONTROL.** Seller shall not be responsible for delays in performance caused by delays at manufacturing plants, or in transportation or due to strikes, fires, floods, storms, war, insurrections, riots, any governmental regulations, order, act or instruction, or other circumstances beyond the Seller's reasonable control. And Buyer's acceptance of goods and/or services shall constitute a waiver of any claims for damages due to delay. Under no circumstances shall the Seller be liable for any loss of use by Buyer or for any indirect or consequential damages arising from such delays.
7. **SERVICE CHARGE: TERMS OF PAYMENT: COLLECTION ACTIONS.** Any account not adhering to the payment terms on the face hereof will be subject to a service charge of one and one-half percent (1½ %) per month on the unpaid balance. If Seller commences an action to collect amounts due on this account. Buyer will indemnify and hold Seller harmless from all expenses incurred in connection therewith, including attorney's fees.
8. **SURVIVAL OF TERMS.** To the extent any provision hereof is held invalid, then that provision shall be deemed to be deleted, and the remaining provisions hereof shall remain in full force and effect.
9. **CUSTOM PRODUCTS.** Custom order production may result in under production or over production by 10%, therefore Auburn Ball Bearings reserves the right to ship 90% of the custom order amount and consider the order filled without further obligation from Auburn Ball Bearings, and to ship over production 10% and invoice the customer for that amount according to the same pricing defined in the quote.
10. **ORDER CHANGES OR CANCELLATION.** Purchaser is obligated for cost and expenses incurred as a result of cancellation, modification, returns, progress being stopped or other changes from quantities and conditions. Purchase Orders for custom product are non-cancelable. Should Auburn Ball Bearings choose to accept cancellation of a purchase order for custom goods, Auburn Ball Bearings reserves the right to invoice the purchaser for any and all costs incurred prior to receipt of cancellation, and purchaser agrees to pay.
11. **RETURNED GOODS. Material may not be returned without prior authorization.** A twenty five percent (25%) handling or restocking charge after inspection and in the opinion of the Seller can be made upon all goods returned for credit. Goods returned for credit must be returned within five (5) days after receipt and must be accompanied by our Return Authorization Number. **Custom items or special order merchandise including all nonstandard material is not refundable.**
12. **FOREIGN SHIPMENT.** In the event this sale involves a foreign shipment, the Seller declares this invoice to be true and correct in every respect and declares the goods described on the reverse side hereof to be the product of the Industry of the United States of America, except as otherwise noted.
13. **LIMITATION OF ACTIONS.** Buyer agrees that any action of any kind by the Buyer against the Seller must be commenced, if at all, within one (1) year after the date of delivery.