

ARCO SILICONE TERMS & CONDITIONS

1. **ACCEPTANCE:** ACCEPTANCE BY BUYER OF SELLERS PROPOSAL IS EXPRESSLY LIMITED TO ASSENT TO THE TERMS STATED ON RETURNING TO SELLER THE ACKNOWLEDGEMENT COPY OF SELLER'S OFFER OF CONTRACT. Prior to acceptance by Buyer, Seller may withdraw or modify this Offer of contract.
2. **THE AGREEMENT:** The agreement between Seller and Buyer (the "contract") with respect to any sales of goods described on the other side hereof ("good") shall consist only of the terms appearing hereon and on the other side hereof together with any additions or revisions of such terms mutually agreed to in writing by Seller or Buyer. Seller objects to, and shall not be bound by, any additional or different terms, whether printed or otherwise. In Buyer's purchase order(s) or in any other communication from Buyer to Seller unless specifically agreed to by Seller in writing. The contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they differ from, modify, add to or detract from the contract, shall not be binding on Seller. There are no agreements, promises, understandings, either verbal or written that are not fully expressed herein. No statements, recommendations, or assistance by either party have been relied upon by either party or shall constitute a waiver by either party of any of the provisions hereof.
3. **TERMS OF NOTIFICATION:** The contract may be modified or terminated only upon Seller's written consent. In the absence of contrary written agreement with Seller, the Buyer shall pay termination charges based upon expenses and costs incurred in the production of the goods to the date such termination is accepted by Seller plus a reasonable profit, except that any goods completed on or prior to Seller's acceptance of such termination shall be accepted and paid for in full by Buyer.
4. **CHANGES IN PRICE:** Unless otherwise set forth in the contract, prices are subject to change for parts released by seller for shipments after the firm date identified on the other side hereof. Seller may change the price to account for changes in Seller's costs plus a reasonable return, as determined by Seller in good faith.
5. **TERMS OF PAYMENT:** Payment terms for all parts supplied by ARCO Silicone ("Seller") require payment in advance P.I.A., unless otherwise provided in the purchase agreement or quotation. Prices are F.O.B. Seller's shipping point unless otherwise provided in the purchase agreement or quotation. Seller may perform periodic credit reviews of Buyer and may, in its sole discretion, amend these Terms of Payment for future orders. Buyer hereby grants to Seller a security interest in all tools, molds, and dies and other property of Buyer which come into the possession of Seller, as security for all sums owing from Buyer to Seller from time to time.
6. **TAXES:** Sales, use, occupation, excise and other taxes upon the production, sale or use of goods are not included in the price and such taxes or any costs in connection therewith, wherever levied and whether imposed before or after payment of invoice shall be paid by Buyer.
7. **DELIVERY:** Promises of delivery from stock are subject to prior sale. Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer and the absence of delays, direct or indirect, resulting from us or contributed to by circumstance beyond Seller's reasonable control. Seller shall in good faith endeavor to meet estimated delivery dates. Seller may ship +/- 10% of quantity ordered. Seller shall not be responsible for claims for error in quantity, weight or number not made within 10 days after Buyer's receipt of goods. Under no circumstances shall Seller be liable for any damages or losses arising out of or resulting from any delay of any kind whatsoever, unless there is specific written agreement between the Seller and the Buyer to the contrary.
8. **RISK OF LOSS:** Buyer assumes all risk of loss of such goods upon delivery by Seller to carrier.
9. **LIMITED WARRANTIES:** Seller warrants that the goods to be delivered hereunder will be of the kind designated on the other side hereof and free from defects of material and workmanship. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE AS TO MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE IN PARTICULAR, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING EXCLUSION IF THE GOODS ARE MADE ACCORDING TO BUYER'S SPECIFICATIONS, SELER DOES NOT WARRANT THE ADEQUACY OF SUCH SPECIFICATIONS OR THAT OR THAT THE GOODS WILL PERFORM IN ACCORDANCE WITH SUCH SPECIFICATIONS. Seller's sole obligation under the foregoing warranties will be limited to either, at the Seller's option, replacing or repairing defective goods or refunding the purchase price for such goods therefore paid by Buyer, and Buyer's exclusive remedy for breach of any such warranties will be enforcement of such obligation of Seller. These warranties will not extend to goods subjected to misuses, neglect, accident, improper storage or improper installation or maintenance or which have been altered or repaired by anyone other than Seller or its authorized representative. Seller shall not be liable on any claim for defective goods which is not made within 30 days after such goods have been received by Buyer.
10. **REMEDIES AND LIMITATIONS OF LIABILITY:** In the event Buyer claims Seller has breached any of its obligations under the contract, whether of warranty or otherwise, Seller may request return of the goods and tender to Buyer the purchase price therefore paid by Buyer, and, in such event, Seller shall have no further obligation under the contract except to refund such purchase price upon redelivery of the goods. No goods may be returned without Seller's written request. If Seller requests the return of the goods, the goods will be redelivered to Seller at Seller's expense by the lowest cost mode of transportation unless otherwise authorized in writing by Seller. In the event Buyer claims Seller has breached any of its obligations under the contract, whether of warranty or otherwise, and Seller has not delivered any goods to Buyer, Seller may tender to Buyer the purchase Price therefore paid by Buyer, and, in such event, Seller shall have no further obligation under the contract except to refund such purchase price therefore paid by Buyer. The remedies contained in this and the preceding paragraph shall constitute the sole recourse of Buyer against Seller for breach of any Seller's obligations under the contract whether warranty or otherwise. In no event shall Seller be liable for indirect or consequential damages nor shall Seller's liability on any claim for damages arising out of or connected with the contract or the manufacture, sale, delivery or use of the goods exceed the purchase price of the goods therefore paid by the Buyer to Seller. Seller shall not be liable for failure to perform its obligations under the contract resulting directly or indirectly from circumstances beyond Seller's reasonable control.
11. **PATENTS:** Seller shall hold Buyer harmless against any rightful claim of any third person by way of infringement of any United States Letters Patent by such of the goods as are of Seller's own manufacture, but, if Buyer furnishes specifications to Seller, Buyer shall hold Seller harmless against any such claims which arise out of compliance with the specifications. Seller's agreement to hold Buyer harmless shall not apply to any infringement consisting of the use of goods manufactured by Seller as a part of any combination with goods manufactured by others. In the event that any goods manufactured by Seller are in any suit held to constitute infringement and their use is enjoined, Seller, if unable within a reasonable time to secure for Buyer the right to continue using such goods, either by suspension of the injunction, by securing for Buyer a license or otherwise, shall, at its own expense, either replace such goods with non-infringing goods or modify such goods so that they become non-infringing, or accept the return of the enjoined goods and refund the purchase price theretofore paid thereof. Except as in this paragraph provide, Seller makes no warranty that the goods will be delivered free of the rightful claim of any third person by way of infringement or the like.
12. **TOOLING:** Buyer's tools, molds and dies ("tooling") in the possession of Seller are at the risk of Buyer, and Seller does not undertake to insure such property. Seller may dispose of any tooling at any time after one year of completion of the most recent production order requiring the use of such tooling, and Seller shall not be liable for the continued retention or availability of any such tooling after the expiration of such period. If Buyer requests Seller to deliver tooling to Buyer, Buyer will pay Seller an engineering charge of 40% of the cost of such tooling except that if, in the judgment of Seller, such tooling includes Seller's proprietary ideas or devices, Seller may refund to Buyer any price of the tooling paid by Buyer rather than surrender the same.
13. **INSERTS:** Prices are based on Buyer supplying all inserts unless otherwise stated in the contract. Practical production loss of inserts may be redetermined after first production run. If requested, scrap inserts will be returned or salvaged at Buyer's expense.
14. **GOVERNING LAW:** The formation and performance of the contract shall be governed by the Uniform Commercial Code as adopted in the State of Arkansas. Any action for breach of the contract, including any breach of warranty, must be commenced within one year after the cause of action has accrued.
15. **CHANGES:** Changes in the work to be performed hereunder may be made only if Buyer submits written instructions for such changes and if Seller accepts those changes in writing. If any such approved changes in drawings, materials, quantities, dates of performance or design of the parts units, tooling or fixtures, in Seller's sole judgment, increase Seller's costs, Seller may condition approval of any such changes of agreement by Buyer to a price increase to recoup such cost increase, plus a reasonable return.