

  
**PENFLEX**  
**TERMS AND CONDITIONS**  
**FOR SALES**

1. **Terms and Conditions Controlling:** ANY OFFER TO SELL BY PENFLEX CORPORATION, ("PENFLEX") AS WELL AS ANY ACCEPTANCE BY PENFLEX OF A PURCHASER'S ORDER IS EXPRESSLY MADE CONDITIONAL UPON PURCHASER'S ASSENT TO THESE TERMS AND CONDITIONS OF SALE AND NO OTHERS. PURCHASER'S TAKING DELIVERY OF ANY PRODUCT OR PAYMENT OF ANY INVOICE SHALL BE CONCLUSIVE EVIDENCE OF SUCH ASSENT. These terms and conditions supersede all prior communications, whether oral or written, and contain the entire agreement of the parties with respect to the subject matter hereof. No term or condition herein may be varied, terminated, modified, rescinded or waived except by a written instrument signed by a duly authorized representative of Penflex. No acceptance or acquiescence in a course of performance, no course of prior dealings and no usage of the trade shall be relevant to supplement or explain any term or condition herein. NO MODIFICATION OR WAIVER OF ANY OF THE TERMS AND CONDITIONS HEREIN SHALL BE DEEMED EFFECTED BY PURCHASER'S ACKNOWLEDGEMENT OR CONFIRMATION CONTAINING OTHER OR DIFFERENT TERMS. SHOULD ANY SUCH ACKNOWLEDGEMENT OR CONFIRMATION RECEIVED FROM PURCHASER CONTAIN ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS THAN THE TERMS AND CONDITIONS HEREIN, SUCH ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS SHALL BE CONSIDERED PROPOSALS BY PURCHASER WHICH ARE HEREBY EXPRESSLY REJECTED AND A CONTRACT OF SALE WILL RESULT UPON PENFLEX'S TERMS AND CONDITIONS AS STATED HEREIN.
2. **Price:** A quoted price is valid only for the specific delivery date quoted by Penflex. Penflex reserves the right to adjust the price if shipment is delayed at Purchaser's request or in the event of a Force Majeure event described in Paragraph 17 hereof. No Penflex employee, sales representative or agent is authorized to alter Penflex's pricing and other terms and conditions of sale or to make any affirmation, representation, promise or warranty with respect to the products sold under the contract of which these terms and conditions are a part (the "Contract").
3. **SHIPMENT; DELIVERY TERMS; RISK OF LOSS:** Shipping dates are quoted based on conditions prevailing on the date of the quotation. In the event of a late shipment for any reason, Penflex shall not be liable for any special, incidental or consequential damages nor shall the Contract be subject to cancellation by Purchaser. If delivery is delayed by the action or inaction of Purchaser or at Purchaser's request, goods held for Purchaser shall be held subject to storage charges and shall be at the risk and expense of Purchaser, any other provision herein notwithstanding.

Unless otherwise directed by Purchaser, Penflex will use its discretion in the choice of carrier and will make all shipments freight collect. Purchaser is responsible for and assumes all risk of loss of or damage to the goods ordered by Purchaser pursuant to the Contract (the "Ordered Goods") upon delivery of the Ordered Goods by Penflex to the carrier. Risk of loss shall not be altered by conduct or actions of either party, whether or not such conduct or actions may constitute a breach of these terms and conditions. Penflex is under no obligation to obtain insurance for shipments unless specifically requested by Purchaser and then only at Purchaser's expense and valuation.

Penflex reserves the right to make deliveries in installments. Delivery of part of any order does not obligate Penflex to make further deliveries, and partial deliveries will be invoiced when made.
4. **Passage of Title:** Title to the Ordered Goods remains with Penflex until the full contract price (including deferred payments, payment on notes or renewals thereof, any interest charges and any late payment charges) has been paid in cash. Purchaser agrees to perform all acts necessary to protect and maintain Penflex's title to the Ordered Goods, including the filing at its expense of UCC Financing Statements.
5. **Insurance:** Until title has passed to Purchaser, Purchaser shall be fully responsible for any loss or damage to the Ordered Goods of any nature whatsoever. Purchaser shall obtain insurance adequate to cover the value of the Ordered Goods against loss or damage, and Purchaser shall have Penflex named as a loss-payee on such insurance at no cost to Penflex.
6. **Payment Terms:** All Penflex products are sold F.O.B. shipping point. Payment is due net within 30 days from the date of invoice therefor. Such invoice shall normally be submitted to Purchaser at the time of shipment. A late payment charge of 1 ½% per month will be charged on all invoices not paid when due. There are no discounts to customers having an overdue balance.

Each order placed by Purchaser and accepted by Penflex shall be considered an independent transaction, and payment therefor shall be due accordingly. If Purchaser is in default under any contract with Penflex, or if Penflex at any time shall not be satisfied with Purchaser's financial responsibility, Penflex shall have the right, without prejudice to any other legal remedy, to refuse to deliver any Ordered Goods except for cash on delivery and to demand immediate payment in full for all Ordered Goods previously delivered.
7. **Taxes:** Penflex's price does not include any present or future sales, revenue, excise or other tax or fee applicable to the Ordered Goods or to their resale and use. Such taxes and fees, if any, are to be paid by Purchaser, or in lieu thereof Purchaser shall provide Penflex with a tax exemption certificate acceptable to the taxing authorities.
8. **Termination or Cancellation:** The Contract shall not be subject to termination or cancellation as a result of delays in delivery or any other cause without Penflex's written consent, nor shall any Ordered Goods be returned to Penflex (except in accordance with the provisions of Paragraph 11 below) without its written approval and shipping instructions. In the event that cancellation of the Contract is accepted in writing by Penflex prior to the completion thereof, Purchaser agrees to pay without delay the full contract price for all complete components or units of the Ordered Goods, suitable cancellation charges for any unfinished portion of the Contract (taking into account actual expenditures made by Penflex, including reasonable overhead charges) and a reasonable amount as profit on the unfinished portion of the Contract.
9. **Claims:** All claims for lost or damaged shipments must be made directly to the delivering carrier. Shortages due to packing errors must be reported to Penflex within 5 days after receipt.
10. **SOLVENCY OF PURCHASER:** Purchaser represents by signing this Contract, and subsequently by receipt of the Ordered Goods, that it is not insolvent as that term is defined in Section 1-201(23) of the Uniform Commercial Code. In the event Purchaser becomes insolvent before any delivery of Ordered Goods, it shall immediately so notify Penflex. A failure to so notify Penflex shall be construed as a reaffirmation of Purchaser's solvency at the time of each delivery under this Contract.
11. **Limited Warranty:** Penflex warrants goods of its own manufacture included among the Ordered Goods against defects in material and workmanship, under normal use and service, for a period of 90 days after the delivery thereof; provided, however, that the warranty period shall in no event extend beyond 120 days after the date the Ordered Goods are ready for shipment from the point of manufacture. Within such warranty period, Purchaser shall have the right to reject and return to the original F.O.B. point, transportation prepaid, any Ordered Goods which do not conform to such warranty; provided, however, such rejection and return shall be made promptly (but in no event more than 15 days) after discovery of such non-conformance. Penflex's obligation under this warranty is limited to replacing, or at its option repairing, the defective part or parts covered by this warranty and delivering such repaired or replaced part of parts to Purchaser at the original F.O.B. point, all without charge to Purchaser. Such remedy is Purchaser's exclusive remedy for breach by Penflex for its warranty set forth in his Paragraph 11. This warranty does not apply to any goods which after delivery alter subject to abuse, accident, alteration or repair by anyone other than engineers authorized by Penflex, improper storage, misuse in application, improper maintenance or failure to observe operating instructions. This warranty does not apply if, upon discovering a defect, Purchaser does not immediately take appropriate steps (such as discontinuing use of the equipment incorporating the defective part) to prevent such defect from being aggravated or resulting in damage to other parts.

**THE WARRANTY SET FORTH IN THIS PARAGRAPH 11 IS THE ENTIRE AND EXCLUSIVE WARRANTY OF PENFLEX WITH RESPECT TO THE ORDERED GOODS AND IS IN LIEU OF ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
12. **Allocations:** Acceptance of orders and sales are subject to allocation by Penflex in times of product shortage in response to factors deemed most appropriate by Penflex at the time.
13. **Fair Labor Standards Act:** Penflex hereby certifies that Ordered Goods delivered under the Contract will be produced and furnished in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and any regulations and orders issued thereunder.
14. **Penflex's Property:** All designs, drawings, information, equipment, materials, dies, jigs, patterns, tools, tooling and other items prepared by Penflex in connection with the Contract (other than the Ordered Goods) and shall be the property of Penflex.
15. **Patents:** Penflex agrees to defend or settle at its own expense any suit or proceeding brought against Purchaser based on a claim that Penflex's own goods (being defined for this purpose as goods designed and manufactured by Penflex) furnished under the Contract infringe upon any United States patent, provided that Penflex is notified promptly of such suit, copies of all suit papers are made available to Penflex, and Purchaser provides Penflex all reasonable cooperation and makes no admission of liability except as approved in advance by Penflex. Penflex shall not be responsible for any settlement of any suit or proceeding made without its written consent. If a patent infringement arises, Penflex may, at its option and expense, procure the right for Purchaser to continue using Penflex's own goods, replace or modify Penflex's own goods so infringing so that their use becomes non-infringing or grant Purchaser a refund of the purchase price of Penflex's own goods so infringing in exchange for the return of such goods. Such replacement, modification or refund shall constitute Purchaser's sole remedy relating to any such patent infringement. Penflex shall have no liability to Purchaser whatsoever for or in respect of any goods other than Penflex's own goods. Purchaser shall indemnify and hold Penflex harmless from and against any claim, suit or proceeding (whether arising out of patent infringement, personal liability or any other event or circumstance) brought against Penflex based on a claim relating to or arising out of any goods manufactured by Penflex in accordance with instructions or designs provided by Purchaser.
16. **Disputes:** Any claim or controversy between Purchaser and Penflex relating to the Contract or arising out of the performance thereof shall, at the election of Penflex, be resolved by a court of competent jurisdiction in the State of Pennsylvania. Notwithstanding the foregoing, Penflex may require any dispute to be resolved in a court of competent jurisdiction in such other place as Penflex may designate in order to obtain jurisdiction over and service on third parties whose presence is, in Penflex's judgment, necessary or appropriate to resolve all questions relating to such dispute in one action. IN NO EVENT SHALL PENFLEX BE LIABLE TO PURCHASER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE. NO CLAIM AGAINST PENFLEX OF ANY KIND, WHETHER AS TO ORDERED GOODS DELIVERED OR FOR NON-DELIVERY OR DELAYED DELIVERY THEREOF AND WHETHER BASED IN TORT, CONTRACT OR OTHERWISE, SHALL BE GREATER IN AGGREGATE AMOUNT THAN THE PURCHASE PRICE OF THE ORDERED GOODS IN RESPECT OF WHICH SUCH CLAIM IS MADE. No action arising out of the Contract may be brought more than one year after the cause of action arose, or, in the case of non-payment, more than three years from the date of last payment. Purchaser shall be liable to Penflex for any expenses incurred by Penflex arising out of Purchaser's breach of any of its obligations under the Contract, including without limitation collection costs and reasonable attorneys' fees.
17. **Force Majeure:** Penflex shall not be responsible for, or deemed to be in default under the Contract due to, any delay or failure in performance resulting directly or indirectly from any cause beyond Penflex's reasonable control, including but not limited to actions or inactions of Purchaser, acts of God, fires, strikes, lockouts or other labor disturbances, floods, epidemics, acts of civil or military authorities, war, riot, freight embargoes, delays in transportation or inability to obtain or delay in obtaining labor, materials or manufacturing facilities despite diligent efforts. In the event of such an occurrence, the time for Penflex's performance shall be extended for a period necessary to make up the time lost by reason of such occurrence. Due dates of payment shall be observed by Purchaser even if shipment, delivery or acceptance of the Ordered Goods is delayed or prevented by any occurrence described in this Paragraph.
18. **Assignment:** Purchaser's rights and obligations under the Contract may not be assigned, delegated, transferred or sold by Purchaser without the prior written consent of Penflex, and any such assignment, delegation, transfer or sale without such consent will be void. Penflex may assign the Contract without Purchaser's consent to a parent, subsidiary or affiliated company, or to another entity in connection with the sale or transfer of all or substantially all of its business. Subject to these restrictions, the provisions of the Contract shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.
19. **Waiver:** The failure of Penflex in one or more instances to insist upon performance of any of the terms or conditions of the Contract or to assert any right or privilege under the Contract, or the waiver of any breach of the terms or conditions of the Contract, shall not be construed as thereafter waiving any such terms, conditions, rights or privileges and the same shall continue and remain in force and effect as if no waiver had occurred.
20. **Separability:** If any provision of the Contract is held to be invalid, illegal or unenforceable, the balance of the Contract shall remain in full force and effect. If any provision of the Contract is held to be invalid, illegal or unenforceable in a particular circumstance, it shall nevertheless remain applicable in all other circumstances.
21. **Law Governing:** The Contract is to be construed and enforced in accordance with the laws of the State of Pennsylvania without giving effect to conflicts of law rules or principles.