
TERMS AND CONDITIONS OF SALE

In consideration of the mutual benefits hereby to be derived, Winston Industries, LLC ("Winston") and any purchaser, lessee or successive purchaser ("Purchaser"), of Winston Commercial Equipment, Equipment Service Parts, and Safety Parts (collectively "Products") agree that:

1. Terms of sale for Products are net 25 (payment must be received within 25 days from invoice date). Prices are subject to change without notice. Purchaser agrees to pay all costs of collection of past due accounts, including reasonable attorney's fees. All claims must be made within five (5) days of receipt of goods or claim will not be allowed. All goods are shipped at Purchaser's risk. Confirmed orders may not be cancelled or delayed without written permission from Winston. Cancelled or delayed orders may be subject to a 20% inventory adjustment/warehousing fee. Delayed orders will be invoiced on the confirmed ship date. Products may not be returned without written permission from Winston as described in paragraph #6 below. Orders placed prior to a price increase, which are due to ship after the increase, may be charged at the new price.

2. An order will not be effective until accepted by an authorized representative at Winston's home office. Unless otherwise specified in writing (a) delivery will be made F.O.B. Louisville, Kentucky and risk of loss or damage shall pass to Purchaser upon delivery to the carrier, and (b) the method or agency of transportation and routing will be selected by Winston. Winston reserves the right to ship freight collect.

3. Winston shall not be liable for any delay in performance due to fire, explosion, casualty, strike or other labor difficulties, shortage of utility facility, delay to transportation, breakdown or accident, compliance with other action to carry out the intent or purpose of any law or regulation, or any cause, whether similar or dissimilar, beyond Winston's reasonable control and Winston shall have such additional time for performance as may be reasonably necessary under the circumstances and the right to apportion its production among its customers in such a manner as it may deem equitable.

4. Purchaser agrees to indemnify and hold Winston harmless from any loss, cost or expense, including cost of defense, and reasonable attorney's fees, incurred by Winston, arising from or related to (1) Purchaser's use or sale of Products, including, but not limited to, Purchaser's failure to warn Purchaser's workers and others of hazards involving the Products; Purchaser's failure to provide copy of Terms and Conditions at time of sale of Products to others; Purchaser's failure to instruct Purchaser's workers and others in how to safely use the Products in compliance with the Use and Care Manual; and Purchaser's failure to provide safe working conditions and proper safety clothing and gear with respect to the Products, and (2) non-compliance with these Terms and Conditions, or both.

5. Purchaser shall pay, in addition to the price hereunder, as a separate item, any taxes which Winston may be required to pay or collect under existing or future laws with respect to the sale, delivery, transportation, or use of any Product sold hereunder including all taxes, however designated, upon or measured by amounts paid to Winston by Purchaser hereunder, except net income tax.

6. Products may not be returned by Purchaser except by prior written agreement with Winston. Returns without prior authorization, as indicated by an RA number applied to the returned packaging, will be refused. All returned Products are subject to inspection by Winston and a 20% restocking charge (\$30 minimum), which may be reduced if replacement Product is ordered, plus any other costs necessary to restore the Products to new condition. The Products must be returned to the Winston factory freight prepaid, in new condition, and in the original packaging. Winston reserves the sole right to determine the amount of credit to be issued on any Products returned for credit. Only standard, currently manufactured Winston Products may be considered for return and credit. No returns will be accepted on modified or special order Products (built to a Purchaser's specifications), used Products, or on Products older than 90 days from the original date of shipment.

7. Acceptance is expressly limited to the Terms and Conditions set forth herein and any additional or different terms proposed by Purchaser are rejected unless expressly assented to in writing. In the event during the course of dealing, Winston signs or otherwise accepts any documents or forms submitted by Purchaser containing any Terms or Conditions contrary to or in addition to those of Winston set forth herein, such documents and forms shall be deemed to have been used for the mere convenience of Purchaser in the conduct of its internal business affairs and not for the purpose of varying the Terms and Conditions of this order. This order including these Terms and Conditions shall constitute entirely the Terms and Conditions between the parties with respect to the transaction covered hereby and to all subsequent transactions for Products obtained from Winston, and no waiver, alteration or modification shall be binding on Winston unless in writing and signed by an authorized officer of Winston at its home office.

8. Purchaser's sole warranty is the Zero Accident Program (ZAP) Warranty Agreement on products manufactured by Winston in effect at the time of the sale. OTHER THAN THE ZAP WARRANTY AGREEMENT, WINSTON MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING THE PRODUCTS. WINSTON EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE TOTAL LIABILITY OF WINSTON WITH RESPECT TO ANY PRODUCT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE THEREOF, AND LABOR TO REPLACE. WINSTON SHALL IN NO EVENT BE LIABLE TO PURCHASER OR OTHERS FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DEFECTIVE WORKMANSHIP, MATERIALS OR ANY ERROR OR OMISSION OF WINSTON.

9. Winston shall not be liable for claims of patent infringement against Purchaser or Purchaser's loss of the right to use the Product.

10. **ARBITRATION:** Any controversy or claim arising out of or relating to this Order, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except that any arbitration hearing shall be held in Louisville, Kentucky. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any application for review of an arbitration award shall be allowed only to the extent required by Kentucky law and shall be brought in an appropriate court in the Thirteenth Judicial Circuit or District of Kentucky, or in the United States District Court for the Western District of Kentucky.

11. **GOVERNING LAW:** This Order and the rights, duties and legal relations of the parties, and any arbitration are governed by and construed under Kentucky laws.

12. The products sold hereunder are produced in compliance with the Fair Labor Standards Act.