

Christy's[®]

TERMS AND CONDITIONS



Terms and Conditions

- EXCLUSIVE TERMS AND CONDITIONS.** Any order, including written purchase orders, electronic orders, or any other writings or communications from the buyer of the purchased goods (the "Buyer") to Christy's® (the "Seller") received and accepted by Seller, and any verbal or written quotations from Seller to Buyer which are accepted by Buyer, shall be construed as an acceptance of Seller's offer to sell its goods in accordance with the terms and conditions of sale set forth herein (the "Terms and Conditions"). This document contains all of the terms and conditions of the agreement (the "Agreement") between Seller and Buyer regarding the goods sold, to the exclusion of any terms and conditions incorporated in Buyer's order or other documents of Buyer. Seller's acceptance of Buyer's order is expressly conditioned on Buyer's acceptance of the terms and conditions contained herein. Buyer, upon placing an order, shall be deemed to have accepted all of the terms and conditions without modification. No alteration, waiver, modification of or addition to the Terms and Conditions shall be binding on Seller unless specifically agreed to in writing by a person authorized by Seller to accept such different or inconsistent Terms and Conditions.
- WAIVER.** No waiver, whether express or implied, by Seller of any of the Terms and Conditions hereof shall be deemed a continuing waiver or trade custom between the parties but shall apply solely to the instance to which the waiver is directed.
- ACCEPTANCE BY SELLER.** Seller reserves the right to accept or reject each such offer. Seller's acceptance of each such offer can be in writing, by electronic record delivered to Buyer, or by Product delivery. Seller may ship less than all Products ordered, which shipment shall constitute acceptance of the order only as to those Products shipped.
- PRICE.** Unless otherwise agreed to by Seller (a) all prices, quotations, shipments and deliveries by Seller are FOB Shipping Point, Freight Collect; (b) all prices, including related extras and deductions, are subject to change without notice and the price to be paid by Buyer will be in accordance with Seller's price in effect on the day of Seller's acceptance; (c) prices do not include Seller's freight/handling charges; (d) prices do not include any sales, use, excise, value-added or other tax, all of which present or future tax obligations are the responsibility of, and must be paid by, the Buyer.
- FREIGHT.** Please see the current Christy's List Price Sheet for the current prepaid Full Freight Allowance. Full Freight Allowed orders are to one destination within the United States, however, limited conditions apply and Buyer should contact Seller regarding the details of said provisions. Orders less than the current full freight allowance will be shipped F.O.B. point of origin, and freight will be prepaid and added to the invoice total. For qualifying Full Freight Allowed orders outside of the continental United States, freight will be prepaid to the U.S. Border. Some items are exempt from prepaid freight and are determined as such by the Seller.
- DELIVERY, TITLE AND RISK OF LOSS.** Unless otherwise specified, Seller's obligation is to deliver the goods to a carrier at the shipping point. Seller reserves the right to produce and ship all or any part of the goods specified in any order from any of its plants or facilities or those of its suppliers. Seller will use all reasonable efforts to comply with Buyer's requests as to method of transportation. However, Seller reserves the right to use any alternate method of transportation, whether or not such transportation results in a higher cost to Buyer, if the method specified by Buyer is deemed by Seller to be unavailable or otherwise unsatisfactory. Title and risk of loss are passed to the Buyer at the moment of Seller's delivery of the goods to the carrier at the shipping point. Although Seller may, as Seller's sole discretion, assist Buyer in connection with the pursuit of any claim for damages, Seller shall not thereby assume any obligations or responsibilities for such damage, nor will Seller be obligated to continue to assist Buyer in the presentation of its claim to any carrier.

7. **CLAIMS.** Buyer is responsible for the inspecting and/or testing of all goods upon actual receipt. Buyer waives any right to assert any claim against Seller arising from any defects, damages or shortages which would have been observable upon reasonable inspection or testing at the time of delivery, unless Seller is advised of such defects, damages or shortages within ten (10) days after receipt of the defective goods by Buyer. The parties agree that such ten (10) day period is reasonable for this purpose. All other claims under these Terms and Conditions must be made within ten (10) days of the discovery of the defect. Buyer must obtain shipping instructions and a Return Material Authorization (RMA) number from Seller prior to returning the goods to Seller for repair or replacement. Unless otherwise agreed, returned goods must be shipped freight prepaid or they will not be accepted by Seller.

8. **PAYMENT.** Unless otherwise agreed, payment terms are Net 30 Days from date of invoice, or payment shall be made at the time specified by Seller. Additionally, all unpaid past due balances for goods that have been delivered shall bear interest at the rate of 1.5% per month until paid. Buyer will be responsible for all costs of collection, including and not limited to, attorney's fees.

9. **CANCELLATIONS.** Buyer may cancel an order prior to receipt only upon prior written notice by Buyer to Seller and upon payment to Seller of reasonable and proper cancellation charges which will, in accordance with good accounting practices, satisfy all costs incurred by Seller, together with its proportionate profit of such costs.

10. **WARRANTY.** Seller warrants to the Buyer that its products shall be free from defects in materials and workmanship for one year from the date a product is shipped to Buyer (the "Applicable Warranty Period"), unless specified otherwise. For purposes of these Terms and Conditions, such shipping date shall be the date on which Seller delivers the goods to a carrier at the shipping point. No claims under this warranty shall be valid unless Buyer notifies Seller in writing within ten (10) days of its discovery of the defect, but in any event prior to the expiration of the Applicable Warranty Period for such product. This warranty does not cover ordinary maintenance, wear and tear within the normal consumable life of a product, abuse, improper use, alterations, repairs and installations which have not been performed by an authorized Seller's representative, and products which have not been maintained or operated in accordance with Seller's written instructions. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Seller will repair or replace, at its option, any products (or parts thereof) which are covered by this warranty and which are found by Seller to be defective. Seller may provide a substitute product of equal or higher value to resolve a warranty claim. No such repair, substitution or replacement will extend the Applicable Warranty Period. In the event that a warranty claim arises, Buyer must contact Seller to arrange return shipment to Seller, with freight prepaid by Buyer. The risk of loss or damage to any products returned to Seller will be with Buyer. **THE REMEDY OF REPAIR OR REPLACEMENT PROVIDED FOR HEREIN IS BUYER'S EXCLUSIVE REMEDY IN THE EVENT OF AN ALLEGED BREACH OF THIS WARRANTY.**

11. **IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OR FOR ANY LOSS, INCLUDING LOSS OF LIFE, DAMAGE, INCLUDING DAMAGE TO PERSONAL PROPERTY OR THE PROPERTY OF OTHERS, OR ANY OTHER EXPENSE ARISING FROM THE SALE, USE OR INSTALLATION OF THE PRODUCTS OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, OR ON TORT, OR REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER OR ITS AGENTS OR REPRESENTATIVES CONCERNING THE SALE, USE OR INSTALLATION OF THE PRODUCTS.**

12. **LIMITATION OF LIABILITY.** SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS OR LABOR COSTS, ARISING FROM THE SALE, USE OR INSTALLATION OF THE PRODUCTS, FROM THE PRODUCTS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT, FROM ANY BREACH OF THIS AGREEMENT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, OR ON TORT OR OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER OR SELLER'S AGENTS OR REPRESENTATIVES CONCERNING THE SALE, USE OR INSTALLATION OF THE PRODUCTS.

13. **FORCE MAJEURE.** Seller shall not be liable for any failure or delay in manufacture or delivery resulting from any cause beyond the reasonable control of Seller, including by way of illustration and not by way of limitation, compliance by Seller with any Government or military regulation, or from acts of God, fires, or other casualty or accident, strikes, lockouts, factory shutdowns, or alterations, embargoes, riots or other disorders, delays or shortages in transportation, or inability to obtain sufficient quantity of fuel, power, labor, manufacturing facilities of materials or other supplies from the usual sources of Seller. Neither shall the Seller be held to the price of the product in his quotation and/or order acknowledgement, in the event cost of materials needed for the Seller's manufacturing process of the product, as the result of events listed in this paragraph, and being beyond the reasonable control of the Seller, would increase beyond what can normally be expected during the life of the contract. Should such cost increases occur, the Seller and the Buyer agree to re-negotiate the price for the product based on the actual cost increases to the Seller for the Buyer's product as a result of said price increases of materials used in the manufacturing of the product in question.

14. **RETURN POLICY.** Buyer must obtain a Return Material Authorization (RMA) Number from Seller prior to shipping any Product back to Seller. All Returns are to be sent prepaid by Buyer. At the discretion of the Seller, unused and undamaged Standard Products may, under certain circumstances, be accepted back for credit or exchange. A restocking charge of 25% may apply, at Seller's sole discretion. Custom made products which are returned as defective, but are found to meet the specifications agreed upon, will be subject to a re-testing charge.

15. **STATUTE OF LIMITATIONS.** Any action by Buyer against Seller arising out of, or relating to, this Agreement or the alleged breach or non-performance by Seller of any provision hereof, regardless of the theory upon which such action is based, must be brought within eighteen (18) months from the date of delivery to Buyer of the Products, material, or part thereof which gives rise to the action.

16. **DURATION OF QUOTATION.** Any Quotation submitted by Seller to Buyer is valid for a period of fifteen (15) days from the date the Quotation is sent and cannot be accepted by Buyer after expiration of that period. The terms of a Quotation are subject to change at any time by Seller without prior notice.

17. **ARBITRATION.** Either Seller or Buyer may elect, by written notice to the other party, to settle any claim or controversy arising out of or relating to this Agreement or the breach or non-performance of any provision hereof, by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time such claim or controversy arises. Buyer and Seller agree that any arbitration shall be administered and conducted in Orange County, California.

18. **GOVERNING LAW.** This Agreement shall be deemed to have been made in Orange County, California, and shall be governed by, construed, and enforced in accordance with the internal, substantive laws of the State of California, without giving effect to conflicts of law principles. The Convention for the International Sale of Goods shall not apply to any case or controversy arising out of or related to this Agreement. Buyer hereby submits to the exclusive jurisdiction of the courts of Orange County, California with respect to any claim or controversy arising out of or related to this Agreement.

19. **SEVERABILITY.** In the event of any provision of this Agreement is held or determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.