

TERMS OF SALE FOR FOGG SYSTEM COMPANY, INC.

1. Terms. The “Terms” set forth herein apply to all sales of goods or services sold by Fogg System Company, Inc. (“Seller”). Any differing or additional terms printed or otherwise contained in Purchaser’s inquiry, order, acknowledgement, confirmation, payment, or acceptance of these Terms, and any alterations of these Terms made by Purchaser shall have no force or effect. Purchaser agrees that such differing or additional terms or alterations shall not constitute any part of the contract between the parties. Furthermore, unless otherwise agreed to in writing signed by an authorized representative of Seller, any such differing or additional terms or alterations to these Terms are deemed by Seller to be “material” alterations and Seller hereby objects to such alterations.
2. Prices. Unless otherwise agreed to in writing, all prices quoted by Seller to Purchaser are based on U.S. dollars, F.O.B. Seller’s shipping point, and include standard U.S. domestic packaging. Prices for Seller’s standard products are found on Seller’s website. Prices for custom products must be quoted in writing by Seller separately. Unless otherwise stated, such prices are effective for thirty (30) days from the date of quotation. Unless otherwise agreed to in writing, except as to goods to be delivered within thirty (30) days of Seller’s acceptance of Purchaser’s order, Seller reserves the right to increase its prices to those in effect at the time of shipment. If the amount Purchaser is charged or quoted for an item is discovered to be incorrect, regardless of whether it is an error in a price posted on the website or otherwise communicated to Purchaser, then Seller reserves the right, at its sole discretion, to correct the mistake prior to order acceptance, to cancel that order or portion thereof, and refund to Purchaser any corresponding amount paid or, if the order has already shipped, to charge or invoice Purchaser for the correct amount. The Purchaser will have the option to pay the corrected amount or return the products in unused condition. This policy will apply regardless of how the error occurred.
3. Transportation / Risk of Loss. Transportation shall be by common carrier, at Purchaser’s risk and expense. Purchaser may supply Seller with its FedEx or UPS account number and thereby designate the common carrier. Should the delivery date be postponed by Purchaser, Seller shall have the right to adjust the price of the undelivered products to Seller’s price at the time of shipment.
4. Taxes. Any sales, use, custom, duties, VAT or manufacturer’s tax which may be imposed upon the sale or use of products, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction are in addition to the quoted prices and paid by Purchaser. Purchaser must provide Seller with a resale/exemption certificate in order to avoid the withholding of applicable taxes. No refund or adjustment to previously withheld taxes will be made by Seller sixty (60) days after the invoice date.
5. Terms of Payment. All payments must be made by credit card or must be pre-paid unless Purchaser has established an account with Seller. For purchases other than by pre-payment or credit card, unless otherwise agreed, terms are net thirty (30) days from the date of invoice. Payment shall be made in US dollars without expense to Seller. Purchaser’s obligation to pay outstanding invoices and all other amounts is absolute and unconditional and is not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Balances remaining unpaid at due date are subject to an interest charge of 1.5% per month or the highest rate permitted by law, whichever is lower, until paid. Any credits, or other funds due or owed to Purchaser will be applied against delinquent balances before payment or reimbursement is made.

Any disputed invoice amounts should be reported immediately and remitted with the undisputed amount by the payment due date. If Seller agrees with the billing dispute, Seller will credit Purchaser the amount of the agreed-upon billing dispute. All billing disputes must be made within six (6) months of the applicable invoice date, or will be deemed to be waived.

Seller reserves the right, in its sole discretion, to require prepayment from Purchaser at any time and may refuse to sell and/or withhold further shipment until all overdue balances are made current. Purchaser shall be liable for, and shall reimburse Seller for all costs and expenses it may incur in connection with collection of any amounts owed to Seller, or for enforcement of its rights, including without limitation, reasonable attorneys’ fees and expenses, court costs, and costs of collection agencies.

6. Returned Goods Policy. Cable products and other custom products are made to order and are non-cancellable, non-returnable except under warranty coverage. Returns for standard products are subject to the following conditions:
 - (a) All returns are subject to the prior authorization of Seller, in its sole discretion. Unauthorized returns will be disposed of and no credit issued.
 - (b) Product returns will only be accepted from the original purchaser.
 - (c) All authorized returned goods must be appropriately cleaned, packaged, and shipped freight prepaid to Seller unless the product was originally shipped in error.
 - (d) Returned products must not have been exposed to any biohazards.
 - (e) Except for warranty items, no Products will be accepted for return after thirty (30) days from the date of delivery.
 - (f) Products must not have deteriorated because of use, improper storage, handling, abuse, or other factors.

Credit for returned goods is conditioned upon Seller’s inspection and approval of such goods upon their return. If Seller determines, in its sole discretion, that any returned goods are not eligible for return due to any of the reasons provided above, Purchaser will not receive a credit, even if a return was authorized. No advance credits will be made.

7. Delivery Date. Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Purchaser’s order.

8. Inspection. Purchaser shall have the right to inspect all goods delivered or services rendered pursuant to these Terms prior to acceptance. Purchaser may test goods to determine whether the goods conform to the specifications of these Terms. Any goods not rejected within ten (10) days of delivery shall be deemed accepted.
9. Indemnification. Except as provided herein, Purchaser shall indemnify and hold Seller harmless from any and all damage, loss and liability, including strict liability and reasonable attorneys' fees, arising out of or relating to Buyer's possession, use or resale of the Products or Services. This obligation shall survive the expiration or termination of this Agreement by either party for any reason.
10. Limited Warranty. SELLER WARRANTS, TO THE ORIGINAL PURCHASER, THAT EACH CABLE PRODUCT MANUFACTURED BY SELLER SHALL BE FREE OF DEFECTS IN MATERIAL AND WORKMANSHIP FOR NINETY (90) DAYS FROM THE DATE OF DELIVERY. SELLER WARRANTS, TO THE ORIGINAL PURCHASER, THAT EACH STANDARD INSTRUMENT PRODUCT MANUFACTURED BY SELLER SHALL BE FREE OF DEFECTS IN MATERIAL AND WORKMANSHIP FOR ONE (1) YEAR FROM THE DATE OF DELIVERY.
- SELLER'S WARRANTY HEREUNDER SHALL NOT APPLY IF ANY REPAIRS, ALTERATIONS OR OTHER WORK HAS BEEN MADE ON SUCH ITEM, OR THE ALLEGED DEFECT IS A RESULT OF ABUSE, MISUSE, IMPROPER MAINTENANCE, ACCIDENT OR THE NEGLIGENCE OF THE PURCHASER. THE WARRANTY DOES NOT EXTEND TO DAMAGE TO OTHER ITEMS OR TO COMPONENTS, ACCESSORIES, PARTS OR SUPPLIES NOT FURNISHED BY SELLER.
11. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THE LIMITED WARRANTY, SELLER AND ITS LICENSORS EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, WHETHER WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS, WARRANTIES AND CONDITIONS OF SATISFACTORY QUALITY, PERFORMANCE, MERCHANTABILITY, MERCHANTABILITY QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE.
12. Exclusive Remedy. SELLER'S SOLE OBLIGATION HEREUNDER SHALL BE TO REPAIR, REPLACE, OR, AT SELLER'S OPTION, REFUND THE PURCHASE PRICE OF ANY DEFECTIVE COMPONENT OR ITEM AND PAY TRANSPORTATION EXPENSES FOR SUCH REPLACEMENT. PURCHASER SHALL PROVIDE LABOR FOR THE REMOVAL OF THE DEFECTIVE COMPONENT OR ITEM AND INSTALLATION OF ITS REPLACEMENT AT NO CHARGE TO SELLER. PURCHASER SHALL BEAR ALL RISK OF LOSS OR DAMAGE TO RETURN GOODS WHILE IN TRANSIT. IN THE EVENT NO DEFECT OR BREACH OF WARRANTY IS DISCOVERED BY SELLER UPON RECEIPT OF ANY RETURNED ITEM, THE ITEM WILL BE RETURNED TO PURCHASER AT PURCHASER'S EXPENSE AND PURCHASER WILL REIMBURSE SELLER THE TRANSPORTATION CHARGES, LABOR AND ASSOCIATED CHARGES INCURRED IN TESTING AND EVALUATING THE ITEM. PURCHASER AGREES THAT THE SELLER'S OBLIGATIONS STATED IN THIS PARAGRAPH SHALL CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY AGAINST SELLER, AND THAT NO OTHER REMEDY SHALL BE AVAILABLE OR SHALL BE PURSUED BY PURCHASER.
13. Limit of Liability. FOR ANY BREACH OR DEFAULT BY SELLER OF ANY OF THE PROVISIONS OF THIS AGREEMENT, OR WITH RESPECT TO ANY CLAIM ARISING HEREFROM OR RELATED HERETO, SELLER AND ITS LICENSORS' ENTIRE LIABILITY, IF ANY, SHALL IN NO EVENT EXCEED THE PRICE PAID TO SELLER BY PURCHASER FOR THE DEFECTIVE COMPONENT. PURCHASER ACKNOWLEDGES THAT THE PRICES QUOTED ARE CONSIDERATION FOR THE STATED LIMITS OF LIABILITY.
14. Limitation of Damages. IN NO EVENT WILL SELLER AND ITS LICENSORS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGES, LOST BUSINESS REVENUE, OR LOSS OF PROFITS, EVEN IF SELLER AND ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES.
15. Consent to Jurisdiction and Venue. This Agreement is to be construed according to the laws of the State of Colorado and any lawsuit based upon any cause of action arising between the parties whether under these Terms, or otherwise, shall be brought in a court of record in Denver County, Colorado, or a court of the United States of America located in Denver County, Colorado.
16. Invalidity. If any provision of these Terms is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.
17. Binding on Successors and Assigns. Each and all of the provisions hereof shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.
18. Waiver by Accepting Varied Performance. No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested.
19. Integration. This Agreement and all Exhibits hereto, as well as agreements and other documents referred to in this Agreement constitute the entire agreement between the parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.
20. General Interpretation. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.