

STANDARD TERMS AND CONDITIONS OF SALE

1. **Acceptance.** The following terms and conditions are applicable to all quotations and are the only terms and conditions applying to the sale of HSM Diversified Products & Services, LLC (including any of its subsidiaries, parents or affiliates, "HSM" or "Seller") products or services, except those that relate to prices, quantities and delivery schedules, as may be described in the Sales Quotation. Samples, descriptions, representations, and other information concerning goods contained in Seller catalogs, websites, advertisements, or other promotional materials or statements or representations made by Seller's employees or sales representatives are for general informational purposes only and are not binding upon Seller. The terms and conditions below are exclusive and are in lieu of all other terms and conditions appearing on Buyer's purchase order or elsewhere and shall apply to all proposals or quotations made, orders accepted, and services provided by HSM. HSM hereby objects to and rejects any other terms and conditions appearing on, incorporated by reference in or attached to a purchase order. Buyer's acceptance of any products or services shall constitute its express and unconditional acceptance of these terms and conditions.
2. **Billing and Payment.** Unless a duly authorized representative of HSM otherwise expressly agrees in writing:
 - a. Payment shall be due Net 30 Days from date of invoice. Payment terms are subject to approval of HSM's credit department. If in HSM's opinion, Buyer's financial condition reasonably appears to call for such action, HSM may require payment in advance.
 - b. HSM may impose **finance charges, at the rate of one and one-half percent (1½%) per month or the highest rate allowed by law**, whichever is lowest, on any amount past due. If an invoice is not paid when due, Buyer agrees to pay all costs and reasonable attorneys' fees incurred by HSM to collect such unpaid invoices, including those incurred if suit is brought or on any appeal. For amounts past due for services, HSM reserves the right to discontinue services until the account is made current or terminate services and seek full recovery for outstanding fees and costs due.
 - c. Prices quoted are exclusive of, and Buyer agrees to pay and be responsible for, any foreign, federal, state or local excise, sales, use, personal property or any other taxes, duties, and assessments applicable to products or services being purchased, excepting only taxes based on HSM's income. Any certificates or other evidence of applicable exemptions to such taxes or duties must be made available to HSM prior to invoicing or such taxes or duties will be charged to Buyer, provided, however, that if HSM does not collect such items from Buyer and is later required to pay the same to any taxing authority, Buyer will promptly make such payment to HSM or, if requested by HSM, directly to such taxing authority.
3. **Place of Product Delivery and Method of Tender.**
 - a. **Sales within U.S.** Delivery terms and pricing for sales within the U.S. are FOB Origin and shipping location origin will be specified on the invoice, unless otherwise agreed to in writing by HSM. HSM, on a pre-pay basis, shall arrange for appropriate means of transportation of the products ordered and will either transport directly to the Place of Destination or engage a 3rd party carrier to ship from Origin to the Place of Destination. Legal Title and risk of loss of or damage to the products associated with 3rd party carrier shipping shall pass to the Buyer upon delivery to carrier at Origin, and Buyer shall have the responsibility of filing any damage claims directly with the carrier. Buyer shall arrange for applicable insurance covering the products from Origin to their Place of Destination.
 - b. **Sales outside of U.S.** Delivery terms and pricing for export product sales are as stated above in paragraph 3(a) except shall be FCA (Incoterms 2010) HSM's shipping location specified on the invoice, unless otherwise agreed to in writing by HSM. Where Buyer requires special delivery requirements, any special expense is to be borne by the Buyer, including special handling, packaging and additional freight charges. When "export packing" is required, Buyer shall be responsible for any extra charges such as export duties, licenses, fees and the like. Risk of loss of or damage to the products or any part of the products shall pass to the Buyer upon delivery to carrier at the Point of Delivery, and Buyer shall have the responsibility of filing any damage claims directly with the carrier. Orders are subject to HSM's ability to obtain export licenses and other necessary papers within a reasonable period. Buyer will furnish all Consular and Customs declarations and will accept and bear all responsibility for penalties resulting from errors or omissions thereon. Buyer shall not re-export the products or items which incorporate the products if such re-export would violate applicable export laws. Legal title to the products shall pass to Buyer at the Point of Delivery, except for sales to Canada or Central or South America (excluding Mexico), in which case legal title to the products shall pass to Buyer when the products cross an international border (including without limitation entering international waters), or at such later point as may be agreed to in writing by HSM.
 - i. The obligation of HSM to supply any products is subject to the ability of HSM to supply such items consistent with applicable laws and regulations of the United States and other governments. HSM reserves the right to refuse to enter into or perform any order, and to cancel any order, under if HSM in its sole discretion determines that performance of the transaction to which such order relates would violate any such applicable law or regulation. Buyer will pay all handling and other similar costs from HSM's factories including the costs of freight, insurance, export clearances, import duties and taxes. Buyer will be "exporter of record" with respect to any export from the United States of America and will perform all compliance and logistics functions in connection therewith and will also comply with all applicable laws, rules and regulations. Buyer understands that HSM and/or the products are subject to laws and regulations of the United States of America which may require licensing or authorization for and/or prohibit export, re-export or diversion of HSM's products to certain countries, and agrees it will not knowingly assist or participate in any such diversion or other violation of applicable United States of America laws and regulations. Buyer agrees to hold harmless and indemnify HSM for any damages resulting to Buyer or HSM from a default of this paragraph by Buyer.
4. **Pricing.** Prices and other fees payable hereunder are based on Buyer's acceptance of these standard terms and conditions of sale without modification or addition. Prices do not account for any amounts due to changes in laws, taxes, tariffs, executive orders, assessments, levies or other similar changes that are enacted after the date an order is placed. HSM shall be entitled to an equitable adjustment in time to perform and price of products, goods or services to offset or account for any costs that it incurs directly or indirectly that arise out of or relate to changes in laws, taxes, tariffs, executive orders, assessments, levies or similar charges, due to such changes including, without limitation, escalation, delay damages, costs to procure, costs to change suppliers, costs of commodities, materials, equipment or goods, or other costs of any kind resulting from the changes. If the parties cannot agree upon an equitable adjustment as set forth above, then Customer may cancel its order subject to the provisions of Section 14 – "Cancellation" below.
5. **Product Unloading, Inspection and Installation.**
 - a. Buyer shall inspect all goods immediately upon receipt and shall give written notice to the Seller providing the specific details of the precise nature of any claim that the products do not meet Seller's written specifications or are of incorrect kind or quantity. Any such written notice must be given within ten (10) days of Buyer's receipt of the goods, and Seller shall then be afforded a reasonable opportunity to inspect the goods and address any issues raised. If Buyer fails to give such notice or provide Seller an opportunity to inspect the goods, Buyer shall be deemed to have conclusively accepted the goods and Buyer shall be bound to pay for them in accordance herewith.
 - b. Unless otherwise specified in writing on a quotation provided by an authorized representative of HSM, Buyer assumes responsibility for unloading and/or installation. If HSM agrees to make unloading, installation or on-site technical support services available, those services will be at HSM's then-prevailing rates or as specified on the invoice.
6. **Maintenance.** Buyer assumes responsibility for any maintenance of products; additional services agreed upon will be as provided separately.
7. **Limited warranty.** Seller warrants that the products, goods or merchandise sold hereunder materially conform to Seller's written specifications applicable thereto, if any. OTHER THAN AS EXPRESSLY STATED IN THE FOREGOING SENTENCE, NO EXPRESS IMPLIED OR STATUTORY WARRANTIES OF ANY TYPE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE, OR OTHERWISE SHALL APPLY TO THESE PRODUCTS, GOODS OR MERCHANDISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO CLAIM, REPRESENTATION, OR WARRANTY OF ANY KIND AS TO THE UTILITY OF THE PRODUCTS, GOODS OR MERCHANDISE FOR BUYER'S OR ITS CUSTOMER'S INTENDED USES. THE PRODUCTS, GOODS AND MERCHANDISE PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" "WHERE IS" BASIS.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTIES FOR ANY DAMAGES, CLAIMS, LIABILITIES, LOSSES, DEMANDS, CLAIMS, INJURY OR DEATH RESULTING FROM, ARISING OUT OF OR RELATED TO THE PRODUCTS, GOODS OR MERCHANDISE. BUYER WILL DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS, AND COMPLETELY AND FOREVER RELEASES SELLER, ITS EMPLOYEES, AGENTS, HEIRS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, LOSSES, CLAIMS, DEMANDS, ACTIONS, FINES, PENALTIES AND COSTS ARISING OUT OF OR RESULTING FROM BUYER'S USE OR NON-USE OF THE PRODUCTS, GOODS OR MERCHANDISE. BUYER, AND ITS HEIRS, SUCCESSORS AND ASSIGNS, HEREBY UNCONDITIONALLY AND EXPRESSLY, COMPLETELY AND FOREVER RELEASES AND DISCHARGES SELLER AND ITS AGENTS, EMPLOYEES, HEIRS, SUCCESSORS AND ASSIGNS FROM ALL LIABILITY AND DAMAGES, INCLUDING ANY AND ALL FINES, PENALTIES, AND RECALL OBLIGATIONS ARISING FROM THE PRODUCTS, GOODS OR MERCHANDISE.

8. No Resale to Federal or State Governments or Agencies. Buyer and its successors and assigns hereby expressly and unconditionally agree to defend, indemnify, hold Seller harmless, and completely and forever release Seller, from and against any and all liabilities, penalties, fines, damages and claims arising from any resale of the products, goods or merchandise to any governmental, Federal or State agencies, bodies or departments, or any entities directly affiliated therewith or receiving funding therefrom.
9. Limitation of Buyer's remedies. HSM will not be liable for claims or damages caused by Buyer's failure to fulfill its obligations herein. To the full extent permitted under applicable law, HSM shall not be liable to Buyer or any third party with respect to any product or service under any contract, negligence, strict liability or other theory for:
 - a. Any claims, actions or causes of action arising out of, under or in connection with any arrangement between Buyer and any third party, or any failure of performance, by a third party;
 - b. Failure or delay of response to an HSM notification to Buyer of a condition, failure or delay of a delivery;
 - c. Any indirect, incidental, consequential, special, exemplary or punitive damages of any kind, including, but not limited to, lost profits, lost revenue, product loss, or liability to third parties, even if HSM is aware of the possibility of such damages. HSM shall be liable only for actual damages in accordance with the provisions hereof.
 - d. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE TOTAL AND AGGREGATE LIABILITY OF HSM TO BUYER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE HEREUNDER, IN EACH CASE, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION ACTUALLY RECEIVED BY HSM FROM BUYER WITH RESPECT TO THE GOODS, PRODUCTS, MERCHANDISE OR SERVICES DIRECTLY GIVING RISE TO SUCH LIABILITY OR CLAIM.
 - e. No warranty liability whatsoever shall attach to HSM until the products, goods and/or services have been paid for in full, and then said liability shall be limited as set forth herein.
10. HSM's Remedies. Without waiving any other rights or remedies available to it under applicable law or otherwise, HSM may, at its option, defer shipment or deliveries hereunder or pursuant to any other contract with Buyer, until all past-due accounts of Buyer to HSM have been satisfied in full. If HSM defers shipment or deliveries, or suspends performance, the time for completion shall be extended for a reasonable period of time not less than the period of such suspension or deferment. Any rights or remedies herein shall be in addition to and not in lieu of any other rights or remedies HSM may have at law or in equity.
11. Proprietary Rights. HSM shall retain all rights to designs, drawings, patterns, plans, specifications, technology, technical data and information, technical processes and business methods, whether patentable or not, arising out of or evolving as a result of HSM rendering engineering services to and designing systems and products for Buyer's use. Buyer agrees not to enforce against HSM or customers of HSM any patent rights, the scope of which includes a system, process or business method utilizing products or engineering services delivered hereunder by HSM and which relates to an invention, improvement, enhancement or development made by or for Buyer on a date subsequent to the date of HSM's offer hereunder.
12. Hazardous Materials.
 - a. NOTE: FOAM PRODUCTS WILL BURN. ALL SOURCES OF HEAT, FLAME AND IGNITION SHOULD BE KEPT AWAY FROM FOAM PRODUCTS.
 - b. Buyer acknowledges that certain supplies covered by these terms may be, or become, considered as hazardous materials under various laws and regulations. Buyer agrees to familiarize itself (without any reliance on HSM), with any hazard of such materials and their applications and the containers in which such materials are shipped. Buyer agrees to inform and train its employees and its customers as to such hazards. Buyer expressly and unconditionally agrees to waive any claim against HSM and hold harmless and indemnify HSM against any and all claims by its employees or customers based on allegations relating to any such hazards except where such claims are based on actual and documented failure to meet written specifications or the inaccuracy of specific safety information actually furnished by HSM.
 - c. Notwithstanding the foregoing, if the goods sold are mattresses and/or mattress/box spring sets, or component parts to be incorporated by Buyer into mattresses and/or mattress/box spring sets subject to the requirements of 16 CFR 1632 and/or 1633, Seller warrants for a period of one (1) year from delivery that it will convey good title to goods sold to Buyer and that at the time of delivery of goods to Buyer the goods will be free from defects in material and workmanship, and the goods meet the requirements of 16 CFR 1632 and/or 1633 as applicable and as in effect at the time of delivery to Buyer.
13. Delay.
 - a. Delivery dates are approximate and are not guaranteed, and HSM shall not be liable for damages of any kind resulting from any delays in fulfillment, shipment or delivery of orders. Furthermore, HSM shall not be liable for any other loss, damage, cost or expense due to causes beyond its reasonable control, such as acts of God, acts of Buyer or any third party, acts of civil or military authority, fires, strikes, floods, epidemics, war, riot, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labor, materials, manufacturing facilities or transportation due to such causes;
 - b. In the event of a delay exceeding ninety (90) consecutive days, Buyer may terminate its order as to the undelivered portion thereof without penalty.
14. Cancellation. Unless otherwise agreed in a writing signed by authorized representatives of Buyer and HSM, all canceled orders will be subject to a 25% fee. Buyer may not cancel orders which have left HSM's dock.
15. Governing Law; Venue. These terms and conditions shall be governed by and construed in accordance with the internal laws of the State of North Carolina, USA, without regard to the conflicts of laws provisions. Buyer and HSM consent to the sole and exclusive venue and jurisdiction of the courts situated in Catawba County, North Carolina, USA. Buyer must commence any action for loss or damage with respect to the products or services within one (1) year from the date of delivery of such products or services or such claim shall be forever barred and released.
16. Compliance with Laws/Anti-Corruption. Buyer shall comply fully with all applicable laws, rules and regulations, including without limitation those of the U.S. and any and all other jurisdictions globally ("Laws") that apply to Buyer's business activities in connection with its purchase of products or services from HSM. Specifically, Buyer shall comply with all Laws relating to anti-corruption, bribery, extortion, kickbacks, or similar matters that are applicable to Buyer's business activities in connection herewith, including without limitation the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Buyer will take no action that will cause Buyer or HSM or any of their affiliates to violate any such laws. Buyer agrees to hold harmless and indemnify HSM for any damages resulting to Buyer or HSM from a default of this paragraph by Buyer.
17. Entire Agreement. Unless otherwise agreed in a writing signed by an authorized representative of HSM and Buyer, these standard terms and conditions of sale constitute the entire agreement between the parties, there being no other promises, terms, conditions, or obligations referring to the subject matter contained herein. If any term or provision hereof is determined to be invalid or unenforceable, the remainder shall not be affected thereby, and each term and provision of hereof shall continue to be valid and enforced to the full extent permitted by law. Any modifications hereto must be in writing and signed by duly authorized representatives of both parties. This agreement may not be assigned by Buyer without HSM's prior written consent, in which event this agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. Any failure by HSM to enforce any provision of this agreement shall not constitute a waiver thereof or any other provision.