

TERMS AND CONDITIONS

1. The terms and conditions herein are the final expression of the parties' agreement and shall supersede any provisions, terms and conditions contained on any confirmation order or other writing buyer may give or receive and rights of the parties shall be governed exclusively by the terms and conditions hereof. Asahi/America, Inc. ("Asahi") will not accept any different or additional terms and conditions except for any such items and conditions as may be expressly accepted by it in writing.
2. Buyer's confirmation is accepted for merchandise selection purpose only. All orders are subject to acceptance by Asahi at its Lawrence Massachusetts office and Asahi reserves the right to reject any order in whole or in part without incurring any liability to buyer or any branch or division thereof for such order as may be rejected. Asahi shall have the right at its discretion to limit any credit to be extended hereunder or to require payment before delivery. In the event Asahi should be unable to manufacture or decide not to manufacture any product ordered, Asahi shall notify the buyer, but shall not be liable for any non-delivery of such merchandise. Buyer shall, however, accept delivery and pay for all other merchandise that is included on that order.
3. An order once placed with and accepted by Asahi cannot be cancelled or modified by buyer without Asahi's written consent.
4. Asahi does not accept in-store completion dates and cancellation dates will not be accepted on made-to-order product once the order has been put into production.
5. Asahi orders (once accepted) may have backorders when necessary. Backorders are not subject to cancellation by buyer unless 30 days past scheduled delivery date.
6. Delivery shall occur and risk of loss shall pass upon delivery of the merchandise sold hereunder to the carrier. Asahi will use buyer's routing guide or instructions after approval from Asahi's Traffic Department. All customers' routings are F.O.B. shipping point. Asahi generates one invoice per shipment and does not include invoices with shipment.
7. Notwithstanding section 8 below, the buyer agrees that no shipment from Asahi will be returned from a carrier unless damage or shortages are acknowledged and signed by the carrier's driver. All claims for lost or damaged shipments must be made directly by buyer to the delivering carrier at time of delivery. Shortages due to packing errors must be reported in writing within 10 days of receipt to Asahi's Customer Service Department. Adjustments can be made only if reported to Asahi in writing within that time. Buyer's requests for proof of delivery by Asahi must be made within 30 days of receipt of invoice. After 30 days, the merchandise will be considered as delivered.
8. Written approval from Asahi's home office must be obtained before returning defective merchandise as well as unworn, good quality merchandise of any quantity. Approval will be granted only to return unused, good quality merchandise shipped as a result of Asahi error. All returns must be sent prepaid. Upon approval by Asahi, return authorization numbers which must be visible on the outside carton. Returns not carrying return authorization numbers will be refused delivery by Asahi and returned to senders expense.

9. Buyer agrees that it will not impose upon Asahi any handling, service or any other charges of that nature whatsoever.

10. Asahi will not be liable for any delay in performance of orders or contracts, or in delivery or shipment of goods, or for any damage suffered by buyer by reason of such delay in performance of orders or contracts, or in delivery or shipment of goods, or for any damage suffered by buyer by reason of such delay, when such delay is directly or indirectly caused by or in any manner arises from fire, flood, accident, riot, act of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays or any other cause or causes (whether or not similar in nature to any of these hereinbefore specified) beyond its control. Asahi reserves the right to discontinue product lines and make changes in products offered at any time.

11. Asahi products are intended to be sold in buyer's outlet(s) as addressed on this order. All branches must be separately approved. Transshipping of merchandise to approved branches of an approved account may not take place without the written approval of Asahi's Lawrence, MA office.

12. Asahi warrants only that the goods described on the face of the purchase order conform to Asahi's customary quality standards for such goods. Applicable warranty periods for products supplied by Asahi/America Inc. can be found on our website at www.asahi-america.com. Otherwise **ASAHI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THE ORDER AND ON THE WARRANTY DOCUMENTS PUBLISHED ON OUR WEBSITE.** Without limiting the generality of the foregoing, **ASAHI SPECIFICALLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE.** This warranty constitutes the only warranty given, super-ceding all prior or contemporaneous oral or written representations. No Seller employee or any other person is authorized to modify this warranty or make any warranty in addition to those set forth herein.

13. **ASAHI FURTHER MAKES NO WARRANTIES, EITHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE AND ANY IMPLIED WARRANTY AGAINST CLAIMS BY THIRD PARTIES FOR INFRINGEMENT AND THE LIKE FOR PRODUCTS ORDERED TO CUSTOM SPECIFICATIONS BY THE BUYER, THAT ARE EXPERIMENTAL, DEVELOPMENTAL OR PROTOTYPE PRODUCTS.**

14. Buyer's remedies in the event of any breach by Asahi shall be exclusively limited to the return of the goods and repayment of the price. These remedies are the purchaser's exclusive remedies for breach of warranty. In no event shall buyer be entitled to claim any special, incidental, punitive or consequential damages of any nature, including, but not limited to, loss of anticipated profits and injury to persons or property. Provided further, Seller shall not be responsible for any warranty for its products integrated into systems designed or specified by third parties without the specific written authority of the Seller.

15. Payment terms shall be as set forth on the face of Asahi's invoice to buyer. Terms adjustment will be made upon request of buyer only if shipment is made more than 7 days in advance of buyer's requested ship date. Discounts will not be allowed on late payments. Discounts are applicable on merchandise only and not on freight or service charges. An interest charge of 1 1/2% percent per month (an annual rate of 18%) will be charged in states where legal on the unpaid balance owed together with cost of collection including reasonable attorney's costs. Asahi will charge a \$75.00 minimal order requirement on all orders. Any tax or duty imposed by any government will be added to the sales price.

16. Any waiver of any of these terms of sale by Asahi shall not be construed to be a waiver of the terms and conditions hereof as applied to subsequent transactions.

17. Any controversy or claim arising out of or relating to this agreement or that breach thereof shall be governed by the laws of the Commonwealth of Massachusetts. Any action or suit must be commenced within one year following delivery of the goods. All disputes shall be litigated exclusively in the state or federal courts located in the Commonwealth of Massachusetts.