



## TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS SUPERSEDE ALL OTHER TERMS AND CONDITIONS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES SUGGESTING ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS. THESE TERM AND CONDITIONS REPRESENT THE FINAL AND COMPLETE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE MATTERS COVERED HEREBY AND MAY BE AMENDED OR CANCELLED ONLY BY WRITTEN AGREEMENT SIGNED BY BOTH PARTIES. THE FOLLOWING CONSTITUTE THE TERMS AND CONDITIONS OF SALE FOR ALL PRODUCTS MANUFACTURED, DISTRIBUTED AND/OR SOLD BY PTUBES INC. OR ITS SUBSIDIARIES OR AFFILIATES (SELLER). ACCEPTANCE OF SELLER'S OFFER TO SELL OR BUYER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF THE PROVISIONS STATED HEREIN. BUYER'S ACCEPTANCE OF EACH SHIPMENT OF GOODS SHALL BE DEEMED TO BE AN ACCEPTANCE OF THE PROVISIONS HEREOF NOTWITHSTANDING ANY ACT OF SELLER, INCLUDING SHIPMENT, ACCEPTANCE OF PAYMENTS, AND NOTWITHSTANDING ANY TERM OR CONDITION CONTAINED IN ANY FORM OF BUYER, AND ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT BY BUYER TO VARY ANY OF THE PROVISIONS HEREIN IS HEREBY DEEMED A MATERIAL ALTERATION AND REJECTED. THE PROVISIONS HEREIN MAY NOT BE ADDED TO, MODIFIED, SUPERSEDED, OR ALTERED EXCEPT BY WRITTEN AGREEMENT OR MODIFICATION SIGNED BY AN OFFICER OF SELLER, NOTWITHSTANDING ANY TERMS WHICH MAY NOW OR IN THE FUTURE APPEAR ON BUYER'S FORMS OR COMMUNICATIONS, ALL OF WHICH ARE REJECTED WITHOUT FURTHER ACTION OF SELLER. NO PERSON (EXCEPT AN OFFICER OF SELLER) IS AUTHORIZED TO BIND SELLER TO ANY ORDER FOR ANY GOODS EXCEPT ACCORDING TO THE PROVISIONS HEREIN.

**1. Prices.** All quotations, unless otherwise specified by SELLER, are binding only for immediate acceptance. All prices for SELLER's products are subject to change or withdrawal without notice. Prices, terms of payment and pricing policies will be those of the SELLER in effect at the time of shipment. SELLER reserves the right to make price changes within the periods of contracts, including installment contracts or blanket orders. The cost of packing and crating other than in accordance with the standards of SELLER may constitute an additional charge and may at SELLER's discretion be added to the sales price(s). SELLER also reserves the right to divide BUYER's order into separate shipments and to invoice and otherwise treat each

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shipment as a separate contract subject to these Terms and Conditions. All sales and shipments are subject at all times to credit approval by SELLER.

**2. Transportation and risk of loss.** Unless otherwise agreed in advance in writing by SELLER, and except for products sold for delivery in Canada, delivery of products hereunder shall be F.O.B. shipping point, with transportation expenses paid by BUYER unless standard SELLER freight prepayment qualifications are met and the risk of loss or damage to products in transit shall fall upon BUYER (whose responsibility it shall be to file claims with carrier at delivery to BUYER at BUYER's premises) upon delivery (a) to BUYER's designated representative, or (b) to a common carrier or other designated shipper (not including SELLER), whichever of the foregoing occurs earlier. If BUYER requires alternate methods of shipment, the additional cost of such shipment shall be charged to the BUYER. If products are sold "F.A.S." at any port in the United States, BUYER shall inspect the products and make any claim of shortage, damage, defect, etc., with respect to the products at said port within 15 days after delivery. BUYER's failure to do so shall constitute waiver of any such rights and claims. BUYER and carrier are responsible for goods lost or damaged in transit. Carrier is BUYER's agent. SELLER in its discretion shall select the appropriate transportation method and routing. All orders, unless otherwise agreed in writing, are for shipment at SELLER's earliest convenience. Stated delivery dates are approximate and will be calculated from the date that SELLER has received all information necessary to permit SELLER to proceed with work immediately and without interruption. If any or all products are not delivered when ready due to the request of BUYER, SELLER reserves the right to invoice BUYER at any time thereafter and to place such products in storage with all risk of loss or damage borne by BUYER and with all expenses and costs attributable thereto for the account of BUYER, which shall be payable by BUYER upon submission of SELLER's invoices to BUYER.

Weight figures shown in catalogs, price sheets, and documents of sale may be approximations only. Products sold on a per pound basis will be invoiced based on actual weight shipped. Products sold on a piece or length basis will be invoiced at the appropriate piece or length price.

Unless otherwise stated, prices shall include all charges for SELLER's usual packing and crating and for cartage to F.O.B. point. SELLER shall not be obligated to provide special containers unless specified and added as an extra charge.

For products sold for delivery in Canada shall constitute the SELLER for purposes of these terms and conditions. For such sales, unless otherwise agreed in advance in writing by SELLER, SELLER shall deliver the products to BUYER at BUYER's designated

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receiving point. Title to the products shall pass from SELLER to BUYER when the products are delivered (but not yet unloaded) to BUYER's designated receiving point. Risk of loss or damage to the products while in transit, with the exception of loss or damage incurred during the unloading of the products by BUYER at BUYER's designated receiving point, shall be borne by SELLER until the products are delivered to the BUYER's designated receiving point.

**3. Receiving and inspection.** Any claim by BUYER based upon or relating to any claimed defect in the products ascertainable upon visual inspection thereof, including without limitation any claim relating to size, type, quantity or shipping damage and the like, must be presented to SELLER or its representative within fifteen (15) days following the date of receipt of the product by BUYER. BUYER's receipt of any product delivered hereunder shall be an unqualified acceptance, and a waiver by BUYER of any and all such claims with respect to such product unless BUYER gives SELLER notice of claim within fifteen (15) days after such receipt. Unless otherwise agreed in advance in writing by SELLER, variations in the products as to composition, dimensions, quantity and the like shall be permissible and not cause for BUYER's rejection or revocation if within prevailing industry (United States of America) standards. BUYER assumes all risk and liability for results. If BUYER requires any tests or inspection not regularly provided by SELLER, such tests will be done at SELLER's option, and SELLER shall be entitled to a reasonable extra charge for such tests.

**4. Products may not be returned** without prior written approval by SELLER. Authorized returns may be subject to handling and inspection charges and must be returned freight prepaid to the location specified by SELLER. Credit will be allowed only for products that (i) are returned in good condition and in their original packaging and (ii) can be returned to stock.

**5. Tooling.** BUYER will indemnify, defend and hold SELLER harmless from and against any liability, damage, loss or expense arising from the use or handling of any tooling supplied or designed by BUYER from which products are to be cast or manufactured by SELLER.

**6. Delays.** SELLER shall not be liable for any delays in delivery due or resulting in whole or in part from or made impossible or impractical by any cause beyond the control of SELLER including but not limited to fire, explosion, epidemics, accident, material and significant breakdown, strike or labor disputes, adverse weather conditions, loss or damage in shipment, shortage or lack of materials, fuel or power, sale or transfer of manufacturing facilities, embargo, acts of God, acts

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(including delay or failure to act) of any governmental authority (de jure or de facto) or any other contingency or delay or failure or cause beyond SELLER's control. If, due to any such occurrence, SELLER is unable to supply total demands for any goods specified, SELLER may, but shall not be obligated to, allocate production, inventory and deliveries (in any manner fair and reasonable to the extent that goods are not special or unique) and will notify BUYER reasonably that there will be delay or non-delivery. If shipment is delayed by BUYER, payments shall be due as though shipment had been made, unless prior written agreement has been provided by SELLER. If SELLER's manufacture is delayed by the BUYER, payment shall be made promptly based on the contract/order price and percentage of completion. In case of such delay by BUYER, SELLER may store the goods for BUYER's account at BUYER's risk and expense and may invoice the goods as though shipped. SELLER's rights to be paid the price of the products and storage charges shall be a lien against the products.

**7. Orders may be cancelled** by BUYER upon prior written notice to SELLER which is received by SELLER at least 30 days prior to production, such notice to be sent by certified mail to SELLER. If BUYER cancels any order without cause, BUYER shall be liable for (i) all completed products, (ii) all additional costs and expenses incurred by SELLER in connection with such order, including without limitation the cost of all work in process and the cost of all materials and other items purchased for such order, plus (iii), as liquidated damages and not as a penalty, an amount equal to 20% of the total order price.

**8. Payment terms and security interest.** Unless otherwise agreed in advance in writing by SELLER, payment terms are 2% 30 days, net 45 days. All payments not made within such time may be subject to a carrying charge of one percent per month on the unpaid balance or the highest rate permitted by applicable law, whichever is the lesser. Until the entire amount due hereunder is paid, SELLER reserves a security interest in all products sold, with all rights, privileges and remedies of a selling secured party in the jurisdiction to which the goods may be shipped or within which they may be kept at any time. In pursuance thereof, BUYER agrees to timely execute any documents which SELLER may request from time to time in order. Terms of payment shall be in U.S. funds at the location designated on the invoice. Any exchange or bank charges SELLER is required to pay shall be charged to BUYER. All invoices are dated as of date of shipment. The date of payment of an invoice is the date the payment is received by SELLER at the location designated on the invoice.

**9. All prices are exclusive** of any applicable foreign or U.S.A. federal, state or local sales, use, excise or other taxes, which SELLER may be required to pay or

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collect, under any existing or future law, upon or with respect to the sale, delivery, storage, processing, use or consumption of any of the products covered hereby, which shall be for the account of BUYER, who shall promptly pay the amount thereof to SELLER upon demand. Any Federal, State, or local taxes now or hereinafter imposed on this transaction or any transaction involved therein, and/or the production, treatment, manufacture, sale, delivery, transportation, or proceeds of the products specified (except income taxes) shall be for the account of BUYER, and if paid or required to be paid by SELLER the amount thereof shall be added to and become a part of the price payable by the BUYER hereunder.

**10. Financial responsibility.** If SELLER has any reasonable doubt at any time as to BUYER's financial condition and ability to perform, SELLER, at its option, may (a) decline to make further shipments other than on a cash in advance basis or upon BUYER providing other security satisfactory to SELLER, or (b) terminate this agreement. In making products to BUYER's specifications it is impractical to produce the exact quantities specified. Therefore, shipment of a reasonable amount over or under the amount specified shall be accepted by BUYER as completing a contract or order for such products, and payment shall be adjusted accordingly.

**11. Patent indemnity.** SELLER agrees to protect, indemnify and hold harmless the BUYER, its successors, assigns, customers and users of its products against any liability, loss, damage or expense whatsoever resulting from any infringement of any United States Letters Patent by anything, number, material, design, composition, or processing of SELLER's origin or practice supplied by SELLER. With respect to any thing, number, material or design, composition, or processing, specified by BUYER and not of SELLER's origin or practice, BUYER agrees to save SELLER harmless from any liability, loss damage or expense whatsoever resulting from any infringement of any United States Letters Patent arising out of SELLER's making, using or selling the same for or to BUYER in fulfillment of its orders or contracts. SELLER and BUYER severally agree to notify the other in writing promptly of any charge of infringement made and of any suit brought in respect to such device or composition and to assume or tender to the other the full control of the defense or settlement of such suit in accordance herewith.

**12. Warranty.** SELLER warrants only to BUYER that products furnished of SELLER's own manufacture will conform to prevailing (United States of America) industry standards as to quality, inspections, composition, quantity and type, and will be free from defects in workmanship and materials for a period of one year from the date of receipt by BUYER of the products. This warranty will not apply to damage resulting from normal wear, improper installation, misuse or neglect. Weight figures shown in

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SELLER's catalog and price sheets, and documents of sale are approximate only. Product is sold on a per unit basis not on a weight basis. SELLER does not warrant any aspect of product representation, installation, modifications or manufacturing carried out by parties other than SELLER and BUYER hereby indemnifies SELLER for any loss, cost or expense to which SELLER may be exposed as a result of any such activities by BUYER or BUYER's customers. SELLER's sole obligation for failure to comply with this warranty will be, at its election, to repair or replace the defective product where BUYER notifies SELLER and such product is made available to SELLER for inspection F.O.B. SELLER's facility or point of manufacture within the one year warranty period. Except to the extent that (1) descriptions of size, quality and type, which may appear on SELLER invoices and other documents, and (2) statements of conformity of products with specification of certain industry, government, or professional organizations standards, which may appear as product information disclosures in SELLER's literature and documents, may from time to time be construed to be express warranties, THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If BUYER notifies SELLER in writing within the warranty period of a defect in any products sold hereunder, and if SELLER determines that such products are not in conformity with the warranty given hereunder. SELLER will replace, F.O.B. point of manufacture, the defective products, provided BUYER returns such products to SELLER's plant, freight prepaid. No products shall be returned without SELLER's prior approval. This shall be BUYER's exclusive remedy for SELLER's liability hereunder. Any claims not made within the warranty period are deemed waived by the BUYER. In lieu of replacing the defective products, SELLER shall have the right, at its sole option, to refund the purchase price therefore.

**13. Limitation of liability.** Under no circumstances will SELLER's liability in the aggregate to BUYER under any legal theory, including without limitation, breach of contract or warranty, or commission of any tort, including negligence and strict liability, or claims for indemnification, exceed the invoice price for the affected product. BUYER must commence any action at law or in equity against SELLER within one year after the product is delivered to BUYER. BUYER will not have any recourse against SELLER for any loss which reasonably could be prevented by cover or otherwise. Exceptions to SELLER's warranty and limitation of liability provisions or waivers of the same granted by SELLER will not constitute a precedent, default or waiver of SELLER's rights to enforce such provisions in whole or in part in the future. SELLER WILL NOT BE LIABLE TO ANY PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND WHATSOEVER, WHETHER ANY CLAIM OR POTENTIAL CLAIM IS BASED UPON THEORIES OF CONTRACT, NEGLIGENCE, OR TORT AND INCLUDING WITHOUT LIMITATION, SELLER WILL HAVE NO LIABILITY FOR SHIPPING CHARGES,

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LABOR, INSTALLATION, COSTS OR ANY OTHER LOSSES OR EXPENSES RELATED TO OR ASSOCIATED WITH THE INSPECTION, REPAIR OR REPLACEMENT OF THE WARRANTED PRODUCTS.

SELLER's liability to BUYER or anyone claiming through or on behalf of BUYER, with respect to any claim or loss arising out of this transaction or alleged to have resulted from an act or omission of SELLER, whether negligent or otherwise, and whether in tort, contract, or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the products with respect to which such liability is claimed or, where appropriate and at the option of SELLER, to replacement of the products. In no case will SELLER be liable for any bodily injury, death, or property damage resulting from or in any way arising out of the products or their sale, use or manufacture. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF THIS TRANSACTION.

**14. Default.** If, in the sole judgment of SELLER, the credit of BUYER has or is likely to become impaired, SELLER shall be entitled to demand payment in cash or SELLER may forthwith cancel the contract/order. BUYER will be in default if (a) BUYER fails to pay SELLER any amount when due under this agreement, (b) BUYER otherwise fails for a period of five days after receiving written notice from SELLER to fulfill or perform any provisions of this agreement, (c) BUYER becomes insolvent or bankrupt, or a petition is filed voluntarily or involuntarily and not dismissed within 30 days of filing, or (d) BUYER makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of BUYER's assets are attached or seized under legal process and not released within 30 days thereafter. Upon BUYER's default, SELLER may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due, (a) make shipments subject to receipt of cash in advance, (b) terminate this agreement and declare immediately due and payable the obligations of BUYER for goods previously shipped, notwithstanding any other provision in these terms and conditions, (c) demand reclamation, or (d) suspend any further deliveries until the default is corrected, without releasing BUYER from its obligations under this agreement. In any event, BUYER will remain liable for all loss and damage sustained by SELLER because of BUYER's default.

**15. Other.** (a) SELLER accepts no responsibility to BUYER or to any person claiming by or through BUYER, for compliance with any statute, governmental rule or regulation made applicable to this contract by reason of BUYER's intended use of the products unless SELLER has received from BUYER prior timely written notification of such statute, rule or regulation and has accepted the same by a separate writing signed

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by an officer of SELLER. (b) SELLER's forbearance or failure to enforce any of these conditions as set forth herein or to exercise any right accruing from any default of BUYER shall not affect, impair or waive SELLER's right if such default continues or if any subsequent default of BUYER occurs. (c) The provisions herein constitute the entire agreement between BUYER and SELLER and no terms or conditions other than those stated herein and no agreement or understanding oral or written in any way purporting to modify these conditions shall be binding on SELLER unless hereafter made in writing and signed by an officer of SELLER. All orders are subject to acceptance at SELLER's offices. This agreement shall be construed in accordance with the laws of Delaware and any disputes arising under these terms and conditions, and the orders to which they pertain, shall be brought exclusively in Delaware. (d) The provisions of this agreement shall be considered severable. In the event that any of the provisions, or portions or applications thereof, of this agreement are held to be unenforceable or invalid by any court of competent jurisdiction, all remaining portions shall remain in full force and effect in accordance with the spirit of this agreement. (e) The rights and obligations of BUYER and SELLER hereunder shall not be assigned to any third party without the prior written consent of the other party. (f) ACCEPTANCE OF THE PRODUCTS SOLD HEREUNDER SHALL CONSTITUTE ASSENT TO THESE CONDITIONS AND SELLER HEREBY OBJECTS TO AND REJECTS ANY AND ALL ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER, WHETHER CONTAINED IN BUYER'S PURCHASING OR SHIPPING RELEASE FORMS OR ELSEWHERE. ALL PROPOSALS, NEGOTIATIONS, AND REPRESENTATIONS, IF ANY, MADE PRIOR AND WITH REFERENCE HERETO ARE MERGED HEREIN, AND ANY PROPOSED ADDITIONS, MODIFICATIONS, DELETIONS OR CHANGES NOT IN SEPARATE WRITINGS SIGNED BY AN OFFICER OF SELLER ARE REJECTED WITHOUT FURTHER ACTION BY SELLER.

**16. All contracts/orders** shall be interpreted, construed, and governed by the laws of the State of Delaware. If any one or more of these provisions are adjudicated invalid, all remaining provisions shall remain in full force and effect.

**17. Official Terms and Conditions** document is only that one in English version

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