

Grass America, Inc.
TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS APPLY TO ALL GOODS AND/OR SERVICES (“PRODUCTS”) SOLD AND/OR PERFORMED BY GRASS AMERICA, INC. (“SELLER”) AND ARE INCORPORATED INTO EACH AND EVERY QUOTATION, ACKNOWLEDGEMENT OR OTHER DOCUMENT ISSUED BY SELLER. BY PURCHASING PRODUCTS FROM SELLER, BUYER INDICATES THAT IT HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS WITHOUT MODIFICATION. SELLER HEREBY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY BUYER IN ANY DOCUMENT OF ANY KIND. ANY SUCH PROPOSED TERMS AND CONDITIONS SHALL BE VOID AND THE TERMS AND CONDITIONS HEREIN SHALL CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS BETWEEN THE PARTIES.

1. Offer; Acceptance; Exclusive Terms of Contract. Seller’s quotation or other offer document, together with these Terms and Conditions (“Quotation”) constitutes Seller’s offer to the purchaser identified in the Quotation (“Buyer”) to sell the Products identified in the Quotation and otherwise to enter into the agreement the Quotation describes and the Quotation shall be the complete and exclusive statement of such offer and agreement (“Contract”). The Contract is formed when Buyer accepts the Quotation by written acknowledgement or by the issuance to Seller of a purchase order or other document for the purchase of the Products (“Purchase Order”). Acceptance is expressly limited to these Terms and Conditions and the terms and conditions expressly referenced on the face of the Quotation. Any terms and conditions that purport to modify, supersede, supplement or otherwise alter these Terms and Conditions, whether contained in Buyer’s Purchase Order or otherwise, are not binding on Seller and shall be deemed rejected and replaced by these Terms and Conditions. Notwithstanding any contrary provision in Buyer’s Purchase Order, neither Seller’s failure to object to Buyer’s terms and conditions, nor Seller’s delivery of Products, commencement of performance, or any other conduct in furtherance of Seller’s supply of the Products to Buyer shall constitute acceptance of Buyer’s terms and conditions. Unless otherwise expressly stated in the Quotation, the Quotation is valid for a period of sixty (60) days after it is issued by Seller. Where a Quotation and/or Purchase Order is not issued as described above, Seller’s order acknowledgement or other confirmation document, together with these Terms and Conditions, shall be the complete and exclusive statement of the Contract described herein.

2. Adjustments. Seller reserves the right to equitably adjust the price and delivery terms of the Contract in the event of, and as a condition to, any changes in the specifications, timing or other requirements for Products, the scope of any work covered by the Contract or the volumes of Products.

3. Shipping and Delivery. All sales of Products are F.O.B. Seller’s facility unless otherwise expressly stated in the Quotation. Responsibility of Seller shall cease upon delivery to and receipt of the Products by a common carrier at which point Buyer will bear all risk of loss for the Products. Unless otherwise expressly stated in the Quotation, Buyer’s specified delivery date(s) and quantities shall allow for a reasonable firm lead time. Premium shipping expenses and/or other related expenses necessary to meet Buyer’s accelerated delivery schedules shall be the responsibility of Buyer. Deliveries of orders placed by Buyer may be changed, deferred or canceled only upon specific agreement in writing by Seller and Seller may condition such agreement upon Buyer’s assumption of liability and payment to Seller for: (a) all completed work at the order price; (b) a sum equal to the costs of work in process including costs accrued for labor and material, (c) any amount for which Seller is liable by reason of commitments made by Seller to its suppliers and/or subcontractors, and (d) any other loss, cost or expense of Seller as a result of such change, deferment or cancellation. Seller shall not have any obligation to maintain any excess inventory of Products, regardless of whether such inventory is designated as a reserve, bank, safety stock, or otherwise.

4. Payment Terms. Unless otherwise expressly stated in the Quotation, all accounts are due and payable in U.S. currency within thirty (30) days from the date of Seller’s invoice, with payment to be issued on or before the due date irrespective of Buyer’s internal payment day practices that may otherwise be in effect. If any payment owed to Seller is not paid when due, it shall bear interest at the lesser of 18% per annum (1.5% per month) or the maximum rate permitted by law, from the date on which it is due until it is paid. Credit and delivery of Products shall be subject to Seller’s approval. In the event Buyer defaults under its payment terms or Seller otherwise deems itself insecure for any reason, Seller may, without notice, suspend deliveries of Products, cancel all credit available to Buyer, require that any invoices outstanding be immediately due and payable in full, and refuse to make any further credit advances. Buyer is prohibited from and shall not setoff against or recoup from or otherwise debit, chargeback or net from any invoiced amounts due or to become due from Buyer or its affiliates any amounts due or to become due from Seller or its affiliates, whether arising under the Contract or under any other agreement.

5. Prices. Unless otherwise expressly stated in the Quotation, prices for Products do not include storage, handling, packaging or transportation charges or any applicable federal, state, local or foreign duties or taxes. Seller reserves the right to increase Product prices in the event of increases in its raw material or component costs or other costs or expenses arising after the date of the Quotation. No price reductions shall apply unless specifically agreed to in writing by Seller and Seller makes no representations or warranties of any kind regarding prices.

6. Design. Seller is not design responsible for any Products and will not have any warranty, indemnification or other liability or obligations for any actual or alleged defects, quality issues, intellectual property infringement or other nonconformities with respect to any Products to the extent related to or arising out of the design and/or specifications for such Products. While Seller may, from time to time, offer advice, recommendations and/or other suggestions as to the design, use and suitability of any Products, such advice, recommendations and/or other suggestions do not constitute any warranties with respect to any Products. Seller disclaims any such warranties and Buyer assumes full responsibility for accepting and/or using such advice, recommendations and/or other suggestions.

7. Warranty. Subject to the terms and conditions herein, Seller provides a lifetime warranty (with such lifetime duration determined by Seller, in its sole discretion, but generally considered to be in the range of seven years, except for Sensomatic and Sensotronic products which shall remain outstanding for a range of five years) that the Products will be free from defects in material and workmanship and will conform to the written specifications that are a part of the order. Seller's indemnification and related obligations are limited solely to an actual breach of the foregoing warranties and will not apply to the extent of any liability arising out of any negligence or other misconduct on the part of Buyer. Buyer shall hold and make available for inspection and testing by Seller all Products claimed by Buyer to be defective or nonconforming. Any claim for defective or nonconforming Products must be verified by Seller and, upon verification, Seller's liability shall be limited to the replacement of such part of the Product in question as Seller may determine is defective or nonconforming. Buyer shall provide Seller with immediate notice of and the opportunity to participate in any and all meetings or other communications between Buyer and its customer concerning actual or alleged defects with respect to the Products. In the event of any Product replacement, the Buyer shall be responsible for the shipping and handling costs currently in effect at such time. The cost of removal, re-installation and any incidental charges is the responsibility of the Buyer. If the defective Product has been discontinued, Seller reserves the right to replace the same with a comparable product currently manufactured by Seller or a third party. There is no guarantee of full interchangeability of such Products. The warranty does not apply to a discontinued Product if, at Seller's discretion, a comparable Product is not available. For items that do not fall under this warranty, Seller will continue to reasonably support the Buyer solely by attempting to provide the most comparable replacements at a reasonable cost. Machinery parts are not covered under this warranty. A written representation of the nature and cause of any alleged defect must be enclosed with the returned applicable Product. Upon confirmation of defect and replacement by Seller, please allow approximately 4 weeks for delivery of the replacement Product(s).

To obtain a replacement, upon confirmation by Seller, the Buyer must return the defective Product, postage prepaid to:

Grass America, Inc.
Product Replacement Department
1202 NC Highway 66 South
Kernersville, N.C. 27284

THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SPECIFICALLY, BUT NOT BY WAY OF LIMITATION, DISCLAIMS ANY AND ALL LIABILITY FOR THE USE OR PERFORMANCE OF THE PRODUCTS IN THE APPLICATION(S) SELECTED BY BUYER AND/OR BUYER'S CUSTOMERS. SELLER FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR PRODUCTS THAT ARE FURTHER PROCESSED BY BUYER OR ANY THIRD PARTY OR IN ANY WAY CHANGED BY BUYER OR ANY THIRD PARTY FROM THE PRODUCTS DELIVERED BY SELLER OR THAT ARE DAMAGED OR CAUSE DAMAGE AS A RESULT OF MISUSE, ACCIDENT, NEGLIGENCE, OR IMPROPER INSTALLATION, ALTERATIONS OR REPAIRS ON THE PART OF BUYER OR ANY THIRD PARTY.

8. Returns. No returned Products will be accepted for any reason unless a valid return authorization for such Products is first secured from an authorized representative of Seller and such return is shipped in accordance with Seller's instructions. Any returns received without a valid return authorization issued by Seller shall, at Seller's option, be: (a) immediately returned to Buyer at Buyer's sole expense, or (b) ten (10) days after notification to Buyer, disposed of at Buyer's sole expense. Buyer shall be responsible for all damage to returned Products resulting from improper packing or handling of the Products.

9. Termination. Each of Buyer and Seller shall have the right to terminate the Contract at any time upon six (6) months' prior written notice to the other party. Notwithstanding the foregoing or anything herein to the contrary, Buyer shall have the right, in its sole and absolute discretion, to accept or reject any order for Products by Buyer, at any time and from time to time. Neither Buyer nor Seller shall have any other right to terminate the Contract, or any part thereof, except where the other party materially defaults in any of its obligations under the Contract and the default is not cured within thirty (30) days after written notice to the defaulting party by the non-defaulting party. Upon any such termination by either party, (a) Seller shall be relieved of any further obligation to Buyer (including, without limitation, any obligation with respect to production, delivery or transition of supply), (b) Buyer shall be liable to Seller for the immediate payment of amounts then billed to date by Seller to Buyer, (c) Buyer shall purchase and pay Seller immediately for all raw materials, components, work in process and finished goods acquired or produced by Seller in connection with the Contract, and (d) Buyer shall immediately reimburse Seller for all claims of Seller and Seller's subcontractors for unamortized investments involved in preparing

to produce or provide or producing or providing Products and for all other loss, cost or expense of Seller as a result of the termination of the Contract.

10. Intellectual Property Infringement. Buyer will, at its expense, indemnify, defend and hold harmless Seller and its shareholders, officers, directors, and personnel, from all losses, liabilities, damages and expenses (including without limit court costs and reasonable attorneys fees) claimed by any third party, by Seller, or by either party's personnel in any claim, demand, settlement, suit or proceeding in connection with, or arising out of any claim or action brought by any third party for actual or alleged infringement of any patent, copyright, trade secret or other intellectual property right based upon Seller's manufacture or use of the Products to the extent attributable to or arising out of the specifications, designs, drawings, engineering or other information or materials furnished by Seller.

11. Liability Limitation. IN NO EVENT SHALL SELLER'S LIABILITY ARISING OUT OF OR RESULTING FROM ANY CONTRACT, INCLUDING, WITHOUT LIMITATION, FOR THE MANUFACTURE, DELIVERY, SALE, REPAIR, REPLACEMENT, INSTALLATION OR USE OF ANY PRODUCT, EXCEED THE AMOUNTS ACTUALLY PAID BY BUYER FOR THE PRODUCTS THAT ARE ALLEGED TO BE DEFECTIVE OR NONCONFORMING OR THE CAUSE OF ANY LOSS OR DAMAGE, WHETHER FOUNDED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL) ARISING OUT OF OR RELATING TO ANY CONTRACT OR ANY PRODUCTS. ANY CLAIM BY BUYER AGAINST SELLER ARISING OUT OF OR RELATING TO ANY CONTRACT OR ANY PRODUCTS CANNOT BE FILED, MADE OR MAINTAINED, AND SHALL BE DEEMED WAIVED, UNLESS FILED WITHIN TWELVE (12) MONTHS AFTER SELLER HAS SHIPPED OR PROVIDED THE PRODUCTS IN QUESTION.

12. Seller's Property. Unless otherwise expressly stated in the Quotation, all facilities, materials, components, tooling, molds, jigs, dies, patterns, fixtures, equipment and related items used in the manufacture of Products shall be and remain the property of Seller. Buyer shall not have any rights in or to any of Seller's property, including, without limitation, any option to purchase such property.

13. Information and Documentation. Seller shall only be responsible to provide Buyer with such information, disclosures, warnings, labels, instructions and other documentation concerning (a) Products and their ingredients, materials and components, (b) the shipping, handling, delivery, use and disposal of such Products, ingredients, materials and components, and (c) any import, export, customs, rules of origin, tax or related matters, as are, in each such case, reasonable under the circumstances and specifically identified by Buyer to Seller in writing. Buyer shall reimburse Seller for any cost to Seller of providing any such information, disclosures, warnings, labels, instructions and other documentation.

14. Compliance. Buyer shall be solely responsible for compliance with any federal, state or local laws, rules, regulations and ordinances or any industry standards that may be applicable to the Products.

15. Proprietary Materials. Seller shall have and retain all rights, title and interest, including all intellectual property rights, in and to all Products and associated materials, including, without limitation, all related reports, specifications, drawings, designs, computer programs and any other property, tangible or intangible, furnished by Seller in connection with or under the Contract ("Proprietary Materials"). No Proprietary Materials created by Seller in connection with or pursuant to the Contract shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act. Buyer shall not have any license to use any intellectual property rights of Seller except to the extent expressly agreed to in a separate license agreement mutually agreed in writing between Seller and Buyer.

16. Service and Replacement Parts. Unless otherwise expressly stated in the Quotation, Seller shall not have any liability or obligation to fulfill Buyer's and its customer's requirements for service and replacement parts except as specifically agreed in writing by Seller, at the prices and for such term as are set forth in such writing.

17. Confidentiality. Buyer shall maintain the confidentiality of all technical, business or financial information of Seller ("Confidential Information") in the same manner in which it protects its own confidential information of like kind, but in no event shall Buyer take less than reasonable precautions to prevent the unauthorized disclosure, publication, dissemination or use of the Confidential Information. Upon termination of the Contract, Buyer shall return the Confidential Information and shall not use the Confidential Information for its own, or any third party's, benefit.

18. Excusable Delay. Seller shall not be liable for any delay or failure to perform if such delay or failure to perform is caused by circumstances beyond its reasonable control, including without limitation acts of God or public authority, riots or other public disturbances, labor disputes of any kind, power failures, failure of Buyer to provide required information, failure of Buyer to provide adequate containers, or the change in cost or availability of raw materials, components or services based on market conditions, supplier actions or contract disputes. During any such delay or failure to perform by Seller, Seller's obligations under the Contract shall be suspended and Seller shall not have any obligation to provide Buyer with Products from other sources or to pay or reimburse Buyer for any additional costs to Buyer of obtaining substitute Products. Seller may, during any period of shortage due to any of the above circumstances allocate its available supply of Products among itself and its customers in any manner that Seller deems fair and reasonable in its sole discretion.

19. Excess Order Quantities. Seller shall not be liable for failure to perform where Buyer requires, in any calendar week, more than 120% of the stated production capacity and Buyer agrees to reimburse Seller for overtime and related costs incurred due to Buyer requiring more than 100% of the stated production capacity in any calendar week.

20. Assignment. The Contract shall not be assigned in whole or in part by Buyer without the prior written consent of Seller.

21. Waiver. Waiver by Seller of any of the terms or conditions of the Contract shall be effective only if in writing and signed by Seller, and shall not constitute a waiver of such terms as to any subsequent events or conditions, whether similar or dissimilar. No course of dealing or custom in the trade shall constitute a modification or waiver by Seller of any right.

22. Survival. These Terms and Conditions shall survive and continue in full force and effect following the expiration, cancellation or termination of any Contract.

23. Entire Agreement. These Terms and Conditions and any other terms and conditions, attachments, exhibits or supplements expressly referenced on the face of the Quotation, constitute the entire agreement and Contract between Seller and Buyer with respect to the matters contained herein and therein and supersede all prior oral or written representations and agreements. Except as otherwise provided in these Terms and Conditions, the Contract may only be modified by a written agreement signed by Seller.

24. Governing Law; Jurisdiction; Venue. Each Contract and any other documentation between Seller and Buyer for the Products shall be governed by the internal laws of the State of North Carolina without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. Buyer consents to the exclusive jurisdiction of the Courts of the State of North Carolina and the United States District Court for the Western District of North Carolina for any action or proceeding arising out of, or in connection with, each Contract and any other documentation between Seller and Buyer for the Products. Buyer specifically waives any and all objections to venue in such courts.