

Tucker Safety Products, Inc.

# [Terms & Conditions]

## **ACCEPTANCE: AGREEMENT**

These terms and Conditions ("Agreement") supersede all other agreements, oral or written, and all other communications between the parties suggesting additional or different terms. This agreement represents the final and complete understanding of the parties and may be amended or canceled only by written agreement signed by both parties. This Agreement expressly limits acceptance to these terms; no order shall have any force or effect until acknowledged in writing by Seller; and any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the terms hereof is hereby deemed material and is objected to and rejected. No Terms of any document or form submitted by Buyer shall be effective to alter or add to the terms and conditions in this Agreement. Unless otherwise stated herein, Buyer's receipt of any portion of the goods ("Goods") shall constitute acceptance of this agreement, unless Buyer immediately returns all such Goods.

Prices, terms and products are subject to change without notice. This price list supersedes all others previously published. This price list is only valid for Seller's authorized distributors. Seller has right to change pricing at time of shipment in addition to the time of order.

## **TERMS**

All payments are due net 30 days from invoice date. All orders are subject to credit approval and acceptance by Tucker Safety Products. No discounts shall be taken except as specifically allowed in writing by Seller. No price is final until time of shipment.

## **PLACING ORDERS**

Minimum order size is \$250 (USD). Split shipments are processed as separate orders. Shipping and handling charges are applicable to all orders. All orders must be submitted in writing to [orders@tuckersafety.com](mailto:orders@tuckersafety.com) or faxed to 719-527-1499.

## **"MADE TO ORDER" or "CUSTOM" PRODUCTS**

All "made to order" or "custom" products require a minimum order quantity and are non-cancelable. Lead times and minimum order quantities will be quoted at the time the order is placed.

## **UNIT OF MEASURE (UOM)**

If the Buyer intends to sell product other than UOM listed in this price list, the product must be re-labeled with the country of origin, material content and manufacturer name (Tucker Safety Products, Inc.).

## **TAXES**

Prices do not include any sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any federal, state or local law, rule or regulation.

## **FREIGHT: DELIVERY**

Prices are FOB Seller's Factory (Colorado Springs, CO). All risk of loss or damage to Goods shipped hereunder shall pass to Buyer upon delivery to Buyer, to its designated agent or to a carrier for delivery to Buyer, whichever occurs first. We cannot accept responsibility for damage or delay by the carrier. All shipping and delivery dates are estimates. Seller shall not be liable for any claim, loss, expense or damage of any kind whatsoever for delays in delivery.

## **WARRANTIES AND LIMITATIONS ON WARRANTIES**

A. Seller expressly warrants that the Goods will conform to their written description and specifications and be free from defects in workmanship and material for a period of twelve (12) months from the date of delivery. Seller makes no guarantee or warranty (express or implied) of the Goods' performance or usefulness for particular applications. Buyer is solely

responsible for determining the suitability of any Goods for a particular application. Any technical advice provided by us with respect to the use of goods sold or services performed hereunder shall be for informational purposes only, and we make no representation or warranty, nor assume any obligation or liability for any such advice. THESE ARE SELLER'S ONLY WARRANTIES. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED.

B. If Buyer notifies Seller in writing within the warranty period of a defect in material or workmanship in any Goods sold hereunder, and if Seller determines, after inspection by a representative of Seller, that such Goods are not in conformity with the warranty given hereunder, Seller will replace, F.O.B. point of manufacture, the defective Goods, provided Buyer returns such Goods to Seller's warehouse, freight prepaid. No Goods 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 Buyer. In lieu of replacing the defective Goods, Seller shall have the right to refund the purchase price thereof.

C. 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 Goods with respect to which such liability is claimed or, where appropriate and at the option of Seller, to replacement of the Goods thereof. 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 Goods 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.

### INSPECTION

Buyer shall inspect the Goods as soon as possible, but at least within seven days after receipt, and Buyer shall immediately notify Seller in writing of any claims that the Goods do not conform to the description in Seller's quotation or order confirmation, that the Goods are in any way defective or that Buyer is rejecting the Goods.

### RETURNS

Returns are only accepted with prior authorization from Seller. Return authorization claims due to errors in shipping, Seller's order entry or distributor ordering must be made within 30 days. Returns are authorized at Seller's discretion for goods that are saleable condition and are less than six months old. Made to order, discontinued or custom products are not returnable for credit. All returns must have the return goods authorization number on the boxes. Returns are subject to a 15% restocking fee and must be shipped prepaid. Damage claims and shortages must be recorded on the delivery receipt at time of delivery in order to be considered. Seller is not responsible for damage to Goods after they have been accepted by Buyer or its agents.

### FORCE MAJEURE

Seller shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control.

### DEFAULT

If Buyer is in default or commits a breach of any of the provisions of this Agreement, Seller shall have, in addition to all other rights it may have, the right to cease work hereunder immediately.

### INDEMNIFICATION

A. If the Goods are manufactured in accordance with specifications or other directions provided by the Buyer, Buyer shall indemnify, defend, and hold harmless Seller against all claims, losses, liabilities, and expenses (including attorney's fees), which Seller may

incur or become liable to pay with respect to such Goods, including (without limitation) claims relating to patent, trademark, copyright infringement or unfair competition, claims of non-compliance with any federal, state or local law or regulation, and any other claim of any third party which relates to or in any way arises out of such specifications or other directions provided by Buyer.

B. Buyer shall indemnify, defend, and hold harmless Seller against all claims, losses, liabilities, and expenses (including attorney's fees), which Seller may incur or become liable to pay which relate to or in any way arise out of Goods subjected to: (i) improper use, accident, damage, abuse or misuse; (ii) abnormal operating conditions or applications; (iii) operating conditions or applications not made known to or contemplated by Seller at the time of the Agreement; or (iv) a use or application other than or varying from that for which goods were designed.

### STORAGE

In absence of agreed shipping dates, Seller shall have the right to invoice Buyer and ship the Goods once they are ready for shipment. If Buyer is unwilling to accept shipment of the Goods on the agreed shipping date or as provided in the prior sentence, Seller may, at its option, place them in storage and bill Buyer for the storage charges. In such case, risk of loss shall pass to Buyer when the Goods are placed in storage, and the date the Goods are placed in storage shall constitute the date of shipment for purposes of beginning the warranty period.

### MISCELLANEOUS

Buyer shall not assign this Agreement without Seller's prior written consent. This agreement shall be construed in accordance with the laws of the State of Colorado. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power or remedy or be considered to be a waiver of any default or acquiescence therein.

[www.tuckersafety.com](http://www.tuckersafety.com) | 719-527-4848

**TUCKER**  
SAFETY PRODUCTS INC.



A Marmon/Berkshire Hathaway Company

Revised 08/01/16