



## TMS INTERNATIONAL DE MÉXICO, S. DE R.L. DE C.V. TERMS AND CONDITIONS OF SALE (OCTOBER 2018)

1. **CONTRACT.** These terms and conditions, together with the terms set forth in the sales confirmation (collectively, the "Terms"), (a) constitute the entire contract between TMS International de México, S. de R.L. de C.V. ("Seller") and the Buyer named in the sales confirmation ("Buyer") with respect to the transaction described in the sales confirmation, regardless of whether Buyer has acknowledged acceptance of the sales confirmation or these terms and conditions, and (b) expressly limit Buyer's acceptance to the Terms. If the sales confirmation is construed as an acceptance or a confirmation acting as an acceptance, then Seller's acceptance is EXPRESSLY CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S WRITING. Further, if the sales confirmation is construed as the offer, acceptance thereof is EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND SELLER HEREBY EXPRESSLY OBJECTS TO ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS; NO SUCH ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS SHALL BE BINDING ON SELLER UNLESS AGREED TO IN WRITING BY SELLER. Seller's acceptance of Buyer's purchase order or commencement of performance shall not constitute acceptance of any of Buyer's terms and conditions. In any event, Buyer's assent to the Terms shall be conclusively presumed from Buyer's (a) acceptance of the Terms by checking the box on the electronic sales confirmation, (b) receipt of the sales confirmation without written objection sent to Seller within ten (10) days after receipt of same, (c) instructing Seller to begin to procure, prepare and / or ship any of the material after receipt of the sales confirmation, or (d) acceptance of all or any part of the material ordered.
2. **PRICE AND PAYMENT.** If an F.O.B. point is not otherwise specified in the sales confirmation, the price stated is F.O.B. origin point. Payment terms are as set forth in the sales confirmation. If no payment terms are specified in the sales confirmation or another agreement between Buyer and Seller, the net amount shall be payable within thirty (30) days after the date of Buyer's receipt of the material.
3. **WARRANTIES AND REMEDIES.**
  - a. **Warranties and Sole Remedy.** Seller makes no warranties with respect to the material sold hereunder except that (i) Seller holds and will pass marketable title to the material, and (ii) the material shall substantially conform to the commercial grade of material specified in the sales confirmation. The SOLE AND EXCLUSIVE REMEDY on which Buyer may rely for a breach of these warranties shall be Seller's cure of the non-conformity or the replacement of the nonconforming material, in either case, as determined by Seller.
  - b. **Disclaimer of Warranties.** Except as set forth in Section 3(a) of these terms and conditions, Seller makes no warranties with respect to the material sold hereunder. IN ALL OTHER RESPECTS, THE MATERIAL IS SOLD "AS IS." Seller DISCLAIMS all other warranties express or implied, including without limitation warranties implied by law, custom of the trade, course of dealing, or otherwise. SELLER DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND INFRINGEMENT. Buyer acknowledges that it alone has determined the intended purpose and suitability of the material sold hereunder, and that any technical or other advice given by Seller is provided solely at Buyer's risk. Further, Buyer assumes all risk of use of the material for any purpose.
4. **LIMITATIONS OF LIABILITY.** The following limitations of Seller's liability are acknowledged by the parties to be fair and reasonable and shall apply to any act or omission of Seller hereunder and to any breach by Seller of the contract; the parties acknowledge that these limitations are in addition to all other limitations set forth herein:
  - a. Seller's total liability, in the aggregate, for all claims arising from or in connection with this contract shall be limited to the amount actually paid by Buyer to Seller hereunder. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR ANY TYPE OF DAMAGES, OR LOST PROFITS, WHETHER ARISING UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, including but not limited to, loss of use of the material, business interruption, damage to property, loss of or damage to goodwill, and claims of third parties.
  - b. **Notice and Time of Claims:** Every claim from any cause, including but not limited to a claim for a remedy under the warranties contained herein, shall be deemed waived by Buyer, or Buyer's customer in the case of resale, unless delivered in writing to Seller within one (1) month from tender of delivery of the material to Buyer. The Buyer expressly waives all applicable statutes of limitations and agrees that any legal proceeding for any breach of this contract shall be waived unless filed within one (1) year after tender of delivery of the material to Buyer.
5. **TIME FOR REJECTION.** If any of the material delivered shall appear not to conform to this contract, Buyer must (a) notify Seller in writing of its rejection within ninety-six (96) hours from constructive placement of the material, and (b) offer to Seller a reasonable opportunity to inspect such material before any of the material is used / consumed. If any of the material delivered does not conform to the contract, Seller's remedy shall be as set forth in Section 3(a) of these terms and conditions. In the event that Buyer does not comply with any of the provisions of this Section 5, Buyer's claim with respect to the allegedly non-conforming material shall be deemed to have been waived. Any handling of the material beyond what is necessary to conduct a reasonable inspection upon arrival (including any use, processing or commingling) shall be deemed to be acceptance of such material.
6. **VARIATIONS.** Weights and quantities shown hereon are estimated. Invoice weights may vary in accordance with permissible variations as are customary in the industry or as shown in Seller's published price lists.
7. **RESCHEDULING.** Requests by Buyer for delivery rescheduling (either earlier or later) will be accommodated, if possible, at the sole discretion of Seller. If agreed to by Seller, a rescheduling request by Buyer that extends delivery sixty (60) days or more beyond the originally scheduled delivery date will result in a rescheduling charge equal to two percent (2%) of the total contract price for each thirty (30) day delay beyond such a sixty (60) day period, up to a maximum rescheduling delay of one hundred twenty (120) days beyond the originally scheduled delivery date. In any case where Seller does not agree to accommodate a rescheduling request, Seller may proceed to ship material to Buyer at full order value.
8. **FORCE MAJEURE.** Seller shall not be liable for any delay in performance, or nonperformance, due to any cause beyond the Seller's control, including but not limited to, fires, floods, or other forces of the elements, acts of God, strikes, or labor disputes, accidents to machinery, acts of sabotage, riots, precedence of priorities granted at the request or for the benefit, directly or indirectly, of any federal or

state government or any subdivision or agency thereof, delay in transportation caused by transportation facilities, restrictions imposed by federal, state or other governmental legislation or rules or regulations thereof, or a substantial increase in Seller's cost (each, an "FM Event"). For purposes of this contract, "a substantial increase in Seller's cost" shall be deemed to have occurred if Seller's performance hereunder would result in a loss to Seller on this sale, as computed under Seller's normal accounting procedures. Upon the occurrence of any FM Event, Seller may terminate this contract in whole or in part without liability for any delay in performance, or nonperformance hereunder; provided, however, that if Seller does not terminate this contract due to the occurrence of an FM Event, Seller and Buyer shall each take such actions that are commercially reasonable under the circumstances to overcome the FM Event and to proceed with the performance of its respective obligations hereunder, including without limitation Buyer's extension of the term of any letter of credit (or other instrument for payment of amounts due hereunder) opened by Buyer for the benefit of Seller or any of its affiliates in connection herewith.

9. **RISK OF LOSS.** Except for F.O.B. destination point shipments, Buyer assumes all risk of loss to and damages from the material sold hereunder upon delivery thereof to the carrier.
10. **TAXES AND OTHER CHARGES.** Buyer will pay, or reimburse Seller if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract, the material covered hereby, or the delivery or use thereof or upon any document of title or instrument used in connection with the transaction described herein, and any and all taxes, tariffs or charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder, in each case, including any interest and / or penalty thereon.
11. **FREIGHT CHARGES.** If the sale hereunder is other than F.O.B. origin point, Seller's confirmation is based upon the freight charges in effect when Seller accepts Buyer's order. In the event of an increase or decrease in applicable charges before the material is shipped, such a change in freight will be for Buyer's account.
12. **ALLOCATIONS.** In the event of a shortage of the material, Seller, in its own discretion, may allocate the material among its customers in such manner as it shall determine, without liability for any delay in the delivery of, or failure to deliver, the material sold hereunder.
13. **DELIVERY DATE; DEMURRAGE CHARGES.** Delivery dates are estimated only and are subject to change upon notice from Seller. ANY DEMURRAGE CHARGES DUE TO BUYER'S DELAYS SHALL BE CHARGED TO BUYER. IF BUYER LOADS OR UNLOADS A SELLER OWNED OR LEASED CAR (TCTX), AND THE CAR IS NOT RELEASED WITHIN TWO (2) DAYS FOLLOWING PLACEMENT FOR LOADING OR UNLOADING, A CHARGE OF FIFTY DOLLARS OF THE UNITED STATES OF AMERICA OR ITS EQUIVALENT IN MEXICAN PESOS (US\$50.00) PER DAY, PER CAR WILL BE ASSESSED AGAINST BUYER.
14. **SERVICE CHARGE; COLLECTION COSTS; SET OFF.** A service charge of one and one-half percent (1.5%) per month shall be applied to all invoices for which payment is not received by the applicable due date. If Buyer defaults in making payment of any amount due hereunder, Seller shall be entitled to recover from Buyer all costs of collection, including but not limited to, collection fees, attorney fees and court costs. Without prejudice to any other right or remedy it may have, Seller reserves the right to set off at any time any amount owing to it by Buyer against any amount payable by Seller to Buyer under this contract or any other contract between the parties.
15. **SECURITY INTEREST.** Buyer hereby grants to Seller a security interest in the material sold hereunder (and all proceeds thereof) until Buyer has (a) paid the purchase price payable hereunder in full, plus accrued service charges and other amounts due hereunder, if any, and (b) fully performed all of Buyer's other obligations hereunder. Buyer hereby acknowledges and agrees that these terms and conditions shall constitute a security agreement (*contrato de prenda*) under the General Law of Credit Transactions and Negotiable Instruments (*Ley General de Títulos y Operaciones de Crédito*) in effect from time to time in Mexico ("LGTOC") that may be enforced in any jurisdiction that Seller determines necessary or advisable to evidence, perfect, or act upon the security interest created hereby. Seller shall have all rights and remedies of a secured party (*acreedor prendario*) under the LGTOC in the event of a breach or default by Buyer in any of its obligations hereunder. Buyer hereby appoints Seller as Buyer's agent and attorney-in-fact pursuant to article 2554 of the Mexican Federal Civil Code to execute and / or file such financing statements and other documents as Seller determines necessary or advisable to evidence, perfect, or act upon the security interest created hereby without further action of Buyer.
16. **AMENDMENT; NON-WAIVER.** The Terms may not be modified, altered or waived, either orally, by usage of trade, course of performance or course of dealing. Any change to, deviation from, or waiver of the Terms shall only be made pursuant to a writing signed by the party to be bound.
17. **SEVERABILITY; ASSIGNABILITY; CONFLICT.** If any term or provision of this contract is declared invalid, illegal or unenforceable in any jurisdiction, (a) the affected provision will be modified to conform to applicable law, if possible, or omitted, and (b) such invalidity, illegality or unenforceability shall not affect any other term or provision of this contract or invalidate or render unenforceable such term or provision in any other jurisdiction. No assignment of this contract shall be made without prior written consent of Seller. In the event of a conflict between the terms set forth in the sales confirmation and these terms and conditions, the terms set forth in the sales confirmation shall prevail.
18. **DISCHARGE OF SELLER.** If (a) Buyer (i) becomes insolvent, (ii) has a business failure, dissolves or is dissolved, (iii) enters (voluntarily or involuntarily) any bankruptcy *concurso mercantil* or receivership proceeding, (iv) assigns assets for the benefit of its creditors, or (v) fails to maintain its account with Seller on a current basis, (b) at any time, Seller reasonably believes that Buyer may fail to perform any of its obligations under this contract for one of the foregoing reasons, or (c) Buyer has failed to substantially or timely perform its obligations under any other contract with Seller, then Seller may immediately cancel this contract without liability to Buyer.
19. **JURISDICTION; APPLICABLE LAW.** All disputes arising directly or indirectly hereunder or in connection herewith shall be resolved in a court of competent jurisdiction sitting in Mexico City, Mexico. Buyer hereby waives the right to assert that any action in any such court is in an improper venue or should be transferred to a more convenient forum due to the location of its domicile or for any other reason. The losing party in any lawsuit shall pay its own and the prevailing party's attorney's fees, costs and expenses. All questions arising hereunder, in connection herewith, or in connection with a quotation or any other document submitted in connection therewith shall be interpreted and resolved in accordance with the Federal laws of Mexico without regard to its conflicts of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods.