

PROSPAN™

Unless otherwise set forth in a quotation or agreed to by, Prospan Manufacturing Company, Inc. in writing, the following terms and conditions ("Terms") apply to all sales of Prospan products and services (collectively, "Products"). By placing an order for Products, you and/or your affiliates (collectively, "Buyer") accept and agree to be bound by these Terms.

1. **OFFER/COUNTEROFFER.** These Terms constitute an offer or counter offer by Prospan to sell Products to Buyer. No additional or different provisions in Buyer's purchase order shall be binding upon Prospan unless specifically agreed to by Prospan in writing. Prospan objects to and rejects any additional or different terms or conditions in any form tendered by Buyer, including expressly rejecting any provisions that dictate that Buyer's terms control or any additional or different provisions in Buyer's electronic business portal. Prospan's failure to object to any provisions or terms from Buyer shall not be a waiver or amendment of any of these Terms.

2. **PRODUCT DEFINITIONS.** When used in these Terms, (a) "Products" includes Standard Products and Special Products, (b) "Standard Products" includes all standard products which are generally available for purchase from Prospan, and (c) "Special Products" includes all modified Standard Products and custom made products.

3. **ORDERS.** All orders are subject to acceptance by Prospan. Each accepted order shall constitute a separate legally binding contract between Prospan and Buyer. Prospan's acceptance and confirmation of an order shall be indicated by (a) verbal, written or emailed means, (b) fulfillment and shipment of the order, or (c) commencement of any work or procurement of any materials to supply the order.

4. **QUOTATIONS.** Prospan quotations are valid for thirty (30) days, unless otherwise stated in the quotation, and may be withdrawn by Prospan at any time and for any reason.

5. **PRICES, TAXES AND FEES.** Unless otherwise set forth in a quotation or agreed to by Prospan in writing, all prices for Products ("Prices") are subject to change without notice and all orders shall be invoiced at the Prices in effect on the dates the orders were accepted by Prospan. Prices do not include sales, use, excise, value-added (VAT) or similar taxes, shipping, insurance while in transit, customs duties, import/export fees, or any other fees related to the sale, use and/or delivery of Products (collectively, "Taxes and Fees"). Payment of Taxes and Fees is the sole responsibility of Buyer. The quantities set forth in a quotation may affect Prices. Prospan reserves the right to adjust Prices if Buyer changes the quantities proposed in a quotation. Additional charges may apply for special domestic packaging, overseas packaging, or special markings performed at Buyer's request.

6. **DELIVERY AND FREIGHT.** Unless otherwise set forth in a quotation or agreed to by Prospan in writing, all Products will be delivered EX-WORKS (EXW) Prospan's facility (INCOTERMS 2010). Prospan will make every reasonable effort to fill orders without delay, but stated delivery dates are approximate only, time is not of the essence, and Prospan reserves the right to readjust shipment schedules without liability to Buyer or any third party. If shipment for Special Products is delayed or suspended by Buyer without the prior written consent of Prospan, payments shall become due from the date on which Prospan was prepared to make delivery and storage shall be at Buyer's sole risk and expense.

7. **CREDIT AND PAYMENTS.** All payments shall be made in the currency and time period noted on the applicable invoice, or if not noted, within thirty (30) days of the invoice date. Prospan reserves the right to withdraw credit at any time and for any reason. Buyer shall have no right to set off for any amounts due or allegedly due from Prospan and/or its affiliates to Buyer and/or its affiliates.

8. **OVERDUE ACCOUNTS.** Timely payment for all invoices is of the essence. To be timely, payment must be actually received by Prospan within terms; for example, mailing or initiating payment on the last day of the payment term is not timely. Prospan reserves the right to charge Buyer a late penalty of 1.5% per month applied against overdue amounts, or the maximum rate permitted by law. If Buyer fails to make payment in accordance with the applicable payment terms, Prospan may, without any liability to Buyer, at its option, (a) defer shipments until payment is made in full, (b) cancel all or any part of the unshipped order, and/or (c) setoff and deduct from any credit balance owed to Buyer and/or its affiliates, the amount owed from Buyer.

9. **NON-WARRANTY PRODUCT RETURNS.** Subject to certain restrictions, Standard Products may be returned at Buyer's expense to Prospan [or a Prospan Authorized Service Center] after receiving a Return Merchandise Authorization (RMA) from Prospan ("Authorized Returns"). Authorized Returns must be new, unused, saleable and in their original or equivalent packaging. Special Products and discontinued Standard Products are nonreturnable.

10. **TITLE AND RISK OF LOSS.** Unless otherwise set forth in a quotation or agreed to by Prospan in writing, title to and risk of loss for each shipment shall pass from Prospan to Buyer upon Prospan's tender of the shipment to the initial carrier. Loss or damage that occurs during shipping shall be Buyer's sole responsibility. Where permitted by law, in the event that Buyer does not make

TERMS AND CONDITIONS OF SALE

17. **PRODUCT IMPROVEMENTS.** Prospan reserves the right to make changes in design and improvements to Products without liability to install such improvements in any Products manufactured prior to the date of such improvements.

18. **GOVERNMENT CONTRACTS.** If Buyer sells Products to any government, or to a government prime contractor or subcontractor, Buyer shall be solely and exclusively liable for compliance with all government acquisition statutes and regulations.

19. **LEGAL COMPLIANCE.** Buyer shall comply with all applicable laws and regulations that may be in effect during Buyer's purchase, sale and/or use, as applicable, of Products, including without limitation, all restrictions on the sale or other transfer of Products to prohibited parties, countries, end-users, or for a prohibited end-use. In addition, Buyer shall not directly or indirectly make any offer or promise to improperly influence any agent, government official, political party or candidate for office in order to obtain or retain business or gain inappropriate advantage.

20. **GOVERNING LAW.** These Terms and any claim, dispute or controversy arising from or relating to Buyer's purchase and/or use of Products ("Dispute"), shall be governed by and construed in accordance with the laws of the State of Illinois (United States). The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

21. **DISPUTES.** The parties shall first try in good faith to settle any Dispute by mediation, which shall be conducted in English and held in Cook County, Illinois. If mediation is unsuccessful, the parties shall submit such Dispute to binding arbitration, which shall be conducted by one arbitrator in English and held in Cook County, Illinois pursuant to the rules of the American Arbitration Association. The arbitrator shall have no authority to award any damages excluded in these Terms and the prevailing party shall be entitled to recover its costs including reasonable attorneys' fees.

22. **LIMITED WARRANTY.** Subject to the exclusions described below, all Products are warranted to be free from defects in materials and workmanship under normal use and service. Unless otherwise set forth in a quotation or agreed to by Prospan in writing, (a) Standard Products are warranted for so long as they are owned by the first using purchaser, and (b) Special Products are warranted for one year from the date of delivery to the Buyer. This warranty is not transferable beyond the first using purchaser and is limited to new Products sold through Prospan authorized representatives and channels.

23. **EXCLUSIVE REMEDY.** In the event that Prospan determines that a Product contains a defect in materials or workmanship, then Prospan, in its sole discretion, will (a) repair the Product, (b) replace the Product, or (c) refund the purchase price of the Product. THIS LIMITED WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDY OF REPAIR, REPLACEMENT OR REFUND IS BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY. IN NO EVENT SHALL PROSPAN'S LIABILITY UNDER THIS WARRANTY EXCEED THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO THE WARRANTY CLAIM. All Products, which are repaired or replaced shall be warranted only for the unexpired portion of the original warranty period.

24. **EXCLUSIONS.** This warranty does not cover (a) any failures, which are not attributable to defects in materials or workmanship, including without limitation, failures caused by accidents, inadequate maintenance, misuse, unauthorized modifications or repairs, improper storage, and normal wear and tear. (b) any lanyards, lifting slings, air hoses, air bottles, regulators or other parts and accessories that are designed by others to wear over time or through use of the Product, as these items are warranted by their manufacturer.

25. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY (I) IN NO EVENT SHALL PROSPAN BE LIABLE FOR ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, INDIRECT DAMAGES, PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) UNDER NO CIRCUMSTANCES SHALL PROSPAN (INCLUDING ITS AFFILIATES) OR ANY OF ITS EMPLOYEES, DIRECTORS, OFFICERS OR AGENTS BE LIABLE FOR OR INDEMNIFY ANY PERSON, COMPANY OR PARTY (COLLECTIVELY THE "INDEMNIFIED PARTY") FOR DAMAGES OF ANY KIND TO THE EXTENT ARISING OUT OF THE NEGLIGENCE, FAULT OR MISCONDUCT OF THAT INDEMNIFIED PARTY. PROSPAN'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO ANY ORDER IS LIMITED TO THE ORDER PRICE FOR THE SPECIFIC PRODUCT THAT GIVES RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS SHALL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OR LAW, OR

payment in full, Prospan reserves the right to reclaim all Products for which payment has not been received.

11. **CANCELLED ORDERS.** Prospan reserves the right to cancel any order at any time if Buyer becomes insolvent or is in breach of these Terms. Orders for Standard Products which have been accepted by Prospan may be cancelled or revised by Buyer with the written consent of Prospan. Orders for Special Products which have been accepted by Prospan, are non-cancellable by Buyer. In the event that Prospan, in its sole discretion, consents to the cancellation of any order for Standard Products, or cancels any order for Products due to Buyer's insolvency or breach of these Terms, then Buyer shall be liable for the payment of a cancellation charge. Such cancellation charge shall equal all costs and expenses incurred by Prospan in its performance under such order up to the date of cancellation, plus Prospan's anticipated profit margin.

12. **SPECIFICATIONS.** All weights, measurements, drawings, capacities and other specifications of Products provided by Prospan ("Prospan Specifications"), whether contained in photographs, schematics, catalogs, or otherwise, are only approximate and are provided solely for reference. Prospan Specifications are not part of these Terms and deviations from or subsequent changes to any Prospan Specifications do not constitute a breach of these Terms. Buyer represents and warrants that any drawing, design, instruction or specifications given to Prospan by or on its behalf ("Buyer Specifications") shall not infringe on any intellectual property rights of any third party. Buyer shall be responsible for ensuring the accuracy of all Buyer Specifications. If requested by Prospan, the design and specifications for Special Products must be approved in writing by Buyer prior to Prospan procuring materials for and/or beginning the manufacture of such Special Products.

13. **CHANGE ORDERS.** In the event that Buyer requests changes to the Specifications ("Change Order") of any Products after Prospan has accepted the order, such changes shall become part of the order only upon Prospan's acceptance of the Change Order. If any Change Order causes an increase in the cost of and/or in the time required for Prospan's performance under the Change Order, and/or if the Change Order results in rework or obsolescence charges, (a) Prospan shall be compensated for all costs incurred in connection with the Change Order, (b) delivery dates shall be extended, and (c) Prices shall be adjusted to maintain Prospan's anticipated profit margin.

14. **INTELLECTUAL PROPERTY RIGHTS.** All rights, title, and interests in the intellectual property (including, without limitation, all patents, copyrights, trade secrets, and trademarks) and written materials developed, designed or generated by Prospan in the supply of Products, belong solely and exclusively to Prospan. Buyer and/or Buyer's customers are only granted a limited, revocable license to use such intellectual property and written materials solely to facilitate their sale and/or use of the Products, as applicable.

15. **CORRECTIONS.** Prospan reserves the right to cancel orders arising from pricing, typographical, and/or other errors in any offer, price list, catalog, web page or quotation.

16. **EXCUSED DELAYS.** Prospan shall not be liable for any loss, damage or delay resulting from causes beyond its reasonable control, including, without limitation, strikes, acts, omissions or delays of Buyer, fires, natural disasters, breakdowns of essential machinery, accidents, material shortages, delays in transportation, or lack of production capacity.

OTHERWISE.

26. **WARRANTY RETURNS.** No Products shall be returned without prior authorization from Prospan or a Prospan Authorized Service Center. Buyer shall prepay all shipping charges for the return of Products to Prospan's designated service location.

27. **INDEMNITY.** Buyer represents and warrants that it shall indemnify and defend Prospan and its affiliates against any and all damages, expenses (including reasonable attorneys' fees), losses, suits, claims, demands and liabilities arising out of any breach of these Terms by Buyer and/or any act, omission, misrepresentation, or negligence of Buyer, and/or its affiliates and agents, relating to the sale and/or use of any Products, including without limitation, any use of the Products which is contrary to their operating instructions and/or the purpose for which they were designed.

28. **ASSIGNMENT.** Prospan may assign or delegate its rights and obligations, in whole or in part, under these Terms and any order to any Prospan affiliate or subsidiary.

29. **TRADEMARKS.** Neither party shall use the name of the other on any publicity releases without securing the prior written approval of the other. Neither party acquires any right, title or interest in any of the trademarks or trade names of the other by virtue of these Terms. Neither party shall use or refer to the other's trademarks or trade-names.

30. **EXPORT.** Buyer shall be responsible for complying with any applicable laws and regulations governing the importation of the Products.

31. **ENTIRE AGREEMENT.** These Terms, together with any quotation or written schedule of exceptions to these Terms which is signed by an authorized representative of Prospan, whether physically attached or incorporated by reference, constitute the entire agreement between Prospan and Buyer with respect to Prospan's supply of Products. Prospan reserves the right to update these Terms at any time; however, Buyer's rights and obligations shall be as provided in the version of these Terms provided to or made available to Buyer at the time of Prospan's acceptance of Buyer's order for Products. Translated versions of these Terms may be available for Buyer's reference, however, in the event of a conflict in the interpretation of these Terms, the English language version of these Terms shall control. If any part of these Terms is for any reason found to be unenforceable, all other provisions of these Terms shall remain in full force and effect.