

# Bauer Customer Purchase Order Acceptance Terms and Conditions

This Purchase Order is subject to the following terms and conditions:

**Contract** - In the absence of a written acceptance of these conditions by the Buyer, placement of an order for any of the goods covered by this order/quotation herein shall constitute an acceptance of these terms and conditions and shall constitute the entire contract between Buyer and Bauer Corporation (hereinafter referred to as Seller). Seller's failure to object to provisions contained in a Buyer's order or other communication shall not be deemed a waiver of the terms and conditions hereof. ANY TERMS INCONSISTENT WITH THE TERMS SET FORTH HEREIN ARE EXPRESSLY REJECTED.

**Pricing** - The prices and terms herein are not subject to verbal changes or other agreements unless approved in writing by an authorized representative of Seller. Prices are based on costs and conditions existing on date of quotation and are subject to change by Seller before final acceptance. Prices do not include applicable taxes, duties, packaging or cartage.

**Payment:** Unless otherwise negotiated and agreed upon in writing prior to order acceptance, the terms are Net 30 upon credit approval, major credit card, or wire transfer.

**Freight:** Unless agreed to otherwise in writing by an authorized representative of Seller, all domestic sales are FOB ship point with all charges to the account of the Buyer. All international sales are Ex Works Factory per Incoterms 2000.

**Order Requirements:** All orders, order changes, or cancellations must be confirmed in writing via fax or pdf sent via email prior to shipment. **No verbal orders will be accepted. Bauer acknowledges the receipt of all orders via a faxed or email acknowledgment.** Changes, errors, or cancellations are the responsibility of the purchaser. Order error as a result of the negligence of the purchaser is not the responsibility of Bauer Corporation and may be subject to service charges up to the full value of the order including freight and other charges.

1. Order additions will be accepted subject to the shipper's ability to meet the original shipping date. Cancellations are subject of approval and may be refused depending on progress of obtaining materials or if items already in production.

**Product Freight Damage or Shortages:** Title to the merchandise is legally transferred to the consignee at point of shipment. **Consignee/purchaser is responsible for filing claims for product shortages. Freight-damaged product should be refused and noted on the freight bill at the time of delivery. Purchaser is responsible for re-issuing a replacement order for any product refused at the time of delivery.**

**Returns:** Returns are only accepted when accompanied by an RGA (Returned Goods Authorization). Under no circumstances are products manufactured specifically for a Buyer (non-stock item) eligible for return. Products returned to Bauer without an RGA will be refused and returned to the purchaser at the purchaser's expense. Authorized returns should be shipped prepaid, added or collect.

Authorized product returns damaged as a result of shipment during the return may be subject to an additional repair charge at Buyer's expense, solely determined by Seller. **Non-stock, custom, or purchases for resale products are not returnable.**

**Past Due Accounts:** Past due invoices are subject to a 1.5% late charge per month or part thereof. All past due accounts are subject to be closed at any time without notice at the discretion of Seller Corporation.

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Closed accounts may be required to re-submit credit information. Any collection fees, including reasonable attorney fees incurred, shall be at Buyer's expense and will be added to any amount due provided that the amount due is at least 60 days past the due date.

**Product Warranty:** Warranty - 1-Year Limited Warranty - Products sold by Seller are warranted to be free of defects in materials and workmanship, exclusive of defects caused by damage from abuse or misuse, negligence, alteration, normal wear and tear, and improper maintenance. Liability under this warranty shall be limited to the repair or replacement of any defective work or material, at Seller's option. Seller shall not be liable for any other damages or losses. The Buyer's sole and exclusive remedy against Seller for any defective material or workmanship shall be for the repair or replacement of the defective parts or products as provided herein. SELLER DISCLAIMS, AND BUYER WAIVES ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES, AND ALL OTHER REMEDIES, TO THE EXTENT PERMISSIBLE BY LAW.

**California Prop 65:** Bauer products can expose you to chemicals including lead, acrylonitrile, styrene, vinyl chloride, chromium and other chemicals that are known to the State of California to cause cancer, birth defects, or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**Force Majeure** - Seller shall not be responsible for any delay in filling this order caused by an event that is not under Seller's control and cannot be reasonably prevented or avoided by Seller. Included are events (as illustration and not limitations) such as acts of god, supply chain disruption not caused by Seller, machinery breakdown, differences with workmen, strikes, floods, lack of transportation facilities, or other causes which are unavoidable or beyond Seller's control, but only to the extent and for the duration that the delay is caused by the event and Seller cannot, through reasonable commercial means, recover from or mitigate the effect of the event.

**Security Interest** - Seller hereby reserves a purchase money security interest in any products sold to Buyer. In the event Buyer breaches the terms or conditions of the Terms and Conditions, including but not limited to, any past due balances, together with interest, costs and attorney fees as permitted herein, Seller shall have all rights and remedies of a secured creditor. Seller is hereby granted a power of attorney on behalf of Buyer to execute all appropriate documents, including but not limited to financing statements, to perfect and record such security interest.

**Waiver, Survival, Severability** - The failure of Seller to enforce or insist upon compliance with the provisions of the Terms and Conditions shall not be construed as a waiver or relinquishment of any provision under the Terms and Conditions, nor shall the waiver of Buyer's breach of any provision of the Terms and Conditions constitute a waiver of any succeeding breach of the same or any other provision. The covenants and agreements of Buyer with respect to payment of amounts due, limitation of Seller's liability and indemnification of Seller contained in the Terms and Conditions shall survive any termination of the Terms and Conditions. If any provision is held to be illegal or unenforceable, the unaffected provisions of the Terms and Conditions will remain in effect.

**Governing Law, Jurisdiction, Dispute Resolution.** This agreement shall be governed by the laws of the State of Ohio, without regard to its conflict of laws provisions.

Any dispute arising from the sale of any product sold by Seller, or under this Agreement, shall be resolved through mandatory, binding arbitration. The rules of the American Arbitration Association, Commercial Rules, Expedited Procedures, shall apply without regard to the amount in controversy or number of parties.

## **Bauer Customer Purchase Order Acceptance Terms and Conditions**

The arbitrator shall determine the arbitrability of any claim or defense, and the arbitrability of any provision of this Agreement. The arbitrator shall award to the substantially prevailing party its costs and fees (including reasonable attorney fees incurred), to the extent just and equitable. In awarding fees the arbitrator shall take into account all facts and circumstances that the arbitrator deems applicable including, as illustration and not limitation, the extent to which the prevailing party actually prevailed in the proceedings; the extent to which the nonprevailing party actually prevailed in the proceedings, and the extent to which a party unreasonably increased the cost of the proceedings.