



**GENERAL TERMS AND CONDITIONS:** The sale of any product by TOK America Inc. ("TOK") and any quotation from TOK are subject to the following additional terms and conditions which are knowingly and conclusively accepted by the Buyer. Any other terms and conditions inconsistent with these terms and conditions are not binding on TOK and are not applicable to any sales or quotation by TOK. TOK's failure to object to any contrary or additional terms contained in any communication from Buyer shall not constitute a waiver of or an addition to these terms and conditions.

1. **Price.** The prices are as negotiated between TOK and Buyer. Prices are subject to change by TOK without prior notice. Prices may be affected by minimum quantity charges and quantity volume discounts. Prices are at all times subject to currency fluctuations, labor charges and material costs.
2. **Delivery.** TOK shall select the carrier. Delivery is FOB to Buyer's facilities or as specified by Buyer all at Buyer's cost. If shipment is from TOK's supplier to Buyer's facilities, then Buyer shall be responsible for all freight, shipping and related transportation costs and fees. TOK shall invoice Buyer for such charges. Buyer shall be responsible for the payment of all personal property and all other taxes, customs duties and fees, excise taxes, penalties, assessments and all transportation charges, insurance costs, and other charges incident to the storage and movement of the Product in connection with delivery to Buyer. Buyer shall pay all customs duties, fees, assessments, penalties, expenses and related transportation charges upon demand by TOK and before delivery. The carrier shall not be construed to be an agent of TOK. TOK shall not be responsible for any carrier delays. TOK's liability for risk of loss shall terminate upon delivery of the product to the carrier. TOK shall not be liable for any damages or penalty for delay in delivery or failure to deliver when such delay is caused by force majeure or is otherwise beyond TOK's control. If the Products are destroyed before the time of risk of loss passes to Buyer, then this Agreement shall be avoided and TOK excused from all obligations hereunder.
3. **Payment.** Payment for product is due to TOK net thirty (30) days from the date of invoice, except for customs duties, all taxes and related fees, penalties, assessments and related transportation expenses, which shall be due and payable upon receipt of TOK's invoice. Late charges and interest for nonpayment shall be allowed to the highest extent allowed by applicable law. All collection charges and collection fees and expenses are the responsibility and obligation of the Buyer.
4. **Limitation of Damages.** IN NO EVENT WILL TOK OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE TO THE BUYER FOR ANY CLAIMS OR DAMAGES IN EXCESS OF AMOUNTS PAID BY THE BUYER TO TOK FOR THE PRODUCT OR SERVICES RELATING TO THE PRODUCT SPECIFIED HEREIN. TOK SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, OR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF TOK OR ITS AUTHORIZED REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
5. **Warranty.** TOK warrants to Buyer that all of its products shall be free from initial defects in material and workmanship during normal use and service for a period of ninety (90) days from date of consumer purchase. TOK must be notified in writing of all warranty claims and all such claims must be made within this time period. Merchantability and fitness for a particular purpose are disclaimed to the fullest extent of law. All weight resistance descriptions on any product are for general reference only and are not guaranteed or specific for any purpose. Warranty claims and product returns are subject to TOK's Return Materials Authorization (RMA) procedures. This limited warranty does not apply to product that has been abused, damaged, altered or misused by any person or entity after title passes to Buyer. TOK America's sole obligation, and Buyer's sole remedy, is for TOK America to replace and send such replacement to Buyer freight prepaid as soon as commercially reasonable and practicable. Buyer shall return products covered by this warranty freight prepaid after completing a failure report and obtaining a RMA number from TOK America to be displayed on the shipping label. Customer shall bear all of the risk, and all costs and expenses, associated with products that have been returned to TOK America for which there is no defect found. No agent, employee or representative of TOK has any authority to bind TOK to any representation of warranty concerning the goods sold to Buyer, unless specifically included within these terms and conditions; any such representation is not deemed a part of the basis of this transaction and shall not in any way be enforceable against TOK. Products are for the U.S. market. This warranty shall not apply to products sold outside the U.S.
6. **Disputes.** Any dispute, controversy or difference of opinion as to whether any of the Product are defective which the parties are unable to resolve by negotiation, shall be resolved by binding arbitration before the American Arbitration Association and its Commercial Dispute Resolution Procedures then in effect in Orange County, California. Each party shall bear its own expenses and costs of the arbitration.
7. **Liability for Damages to TOK.** Buyer understands that upon TOK's acceptance of Buyer's order, TOK will incur substantial expenses and suffer significant losses if Buyer subsequently breaches its agreement to purchase the Product. In the event of any default by Buyer, Buyer shall be liable for all damages suffered by TOK and shall indemnify TOK against and be responsible for all of TOK's obligations to any third parties involved in supplying the Product.
8. **Relationship.** The relationship created between Buyer and TOK shall be strictly that of customer and supplier. Neither party is constituted an agent or legal representative of the other party for any purpose whatsoever, and neither party is granted any right or authority hereunder to assume or create any obligation, express or implied, or to make any representation, warranties or guarantees on behalf of the other party.
9. **Waiver.** A waiver by either party of a breach of any of the terms hereof by the other party shall not be deemed a waiver of any subsequent breach.
10. **Choice of Law and Venue.** This Agreement, and any dispute arising from the relationship between the Parties hereunder, will be governed by the laws of the State of California, excluding its conflict of law rules. The Parties knowingly, voluntarily and irrevocably consent to venue in Orange County, California on all matters and disputes relating to and arising out of this Agreement.
11. **Severability.** If any of the terms or conditions hereof are held void or unenforceable, such terms or conditions will be treated as severable, leaving the remainder of the terms and conditions valid and enforceable.
12. **Attorneys' Fees.** In any action or proceeding involving the enforcement or interpretation hereof, the prevailing party, whether plaintiff or defendant, shall be entitled to reimbursement of its reasonable attorneys' fees and all costs and expenses incurred in connection therewith, in addition to any other relief to which it may be entitled.
13. **Interest and Collection Costs.** Any amount not paid by Buyer when due shall bear interest at the highest legal rate permitted by applicable law. All costs of collection and enforcement of any judgment shall be awarded.
14. **Use of Standard Forms.** For purposes of convenience only, the parties shall be free to use their standard business forms in connection with the transactions contemplated by this Agreement. However, this Agreement shall take precedence over any invoices, quotations, purchase orders or other standards forms of Buyer. Any terms contained in such standard forms that are inconsistent with the terms herein shall be of no force or effect.
15. **Successors In Interest.** This Agreement shall be binding upon and inure to the benefit of the parties and shall not be assigned by either party without the prior written consent of the other party.
16. **Entire Understanding.** This Agreement constitutes the entire agreement between TOK and Buyer and shall supersede any other prior agreements, whether oral or written, express or implied, as they pertain to the product and services ordered, and shall supersede any conflicting provisions of Buyer's purchase order and written acknowledgment. This Agreement may not be changed or modified except as specifically and mutually agreed upon in writing by both parties.