



**ROTO FRANK OF AMERICA, INC.**

**TERMS AND CONDITIONS OF SALE**

1. *Place of Delivery.* All shipments are F.O.B. Roto Frank Distribution Center.
2. *Shipping Dates are Approximate.* Lead times and estimated Shipping Dates (hereinafter "Shipping Dates") are approximate and are based upon prompt receipt of all necessary information. Roto will use commercially reasonable efforts to deliver products on or before the estimated Shipping Date. Roto will use commercially reasonable efforts to notify Purchaser if the estimated Shipping Date(s) cannot be honored.
3. *Force Majeure.* Roto will not be responsible for any delay in or impairment of performance or non-performance occasioned by any cause beyond its reasonable control, including, but not limited to, strikes, lockouts or labor disruption, delays of vendors or carriers, fire, wars, riots or embargo delays, government or regulatory actions, shortages of transportation equipment, fuel, labor or materials, severe weather conditions, or otherwise. Any such delays shall affect a corresponding extension of Roto's performance dates.
4. *Return of Goods.* Purchaser shall not return products except with Roto's advance written authorization. All authorized returns are subject to a restocking charge of 20% of the original purchase price, plus any other charges incurred to restore the product to a saleable condition. Product considered for return must be standard product and must have been purchased within the 12-month period prior to the date of requested return. Under no circumstances will Roto accept the return of any discontinued product or any product not returned in its original carton with all parts and in full carton quantities. Freight on all returned product must be prepaid to our distribution center and must be received within 30 days of the date that Roto authorizes return of the products.
5. *Risk of Loss.* Delivery of products to a common carrier shall constitute delivery to Purchaser and risk of loss shall pass to Purchaser at the time of such delivery to such common carrier. Claims for damaged or lost products in transit shall be filed by Purchaser directly with the common carrier. Estimated Shipping Dates are computed from time of entry of order to delivery of products to a common carrier at Roto's distribution center in Chester, Connecticut. Roto shall not be liable for damages of any kind, including but not limited to incidental, consequential or expectation damages or any other direct or indirect damages resulting from delays in shipping, including but not limited to loss of use of the products or lost profits. Section 2-510 of the Uniform Commercial Code is superseded by the terms set forth herein and shall have no effect. All non-conforming products must be reported by Purchaser to Roto within seven (7) days of invoice date. After such 7-day period, Purchaser shall be deemed to have accepted the products notwithstanding any non-conformity.
6. *Solvency of Purchaser.* Purchaser represents by accepting this order that it is not insolvent as that term is defined in §1-201(23) of the Uniform Commercial Code. In the event that Purchaser becomes insolvent before delivery of the products, it will immediately notify Roto. The failure to notify Roto shall be construed as a reaffirmation of Purchaser's solvency at the time of delivery.
7. *Remedies* NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT WILL ROTO BE LIABLE FOR ANY PUNITIVE, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER IN CONNECTION WITH THE SALE OR DELIVERY OF PRODUCTS OR ANY OTHER ACTION OR INACTION ARISING OUT OF THESE TERMS AND CONDITIONS. IN NO EVENT WILL ROTO HAVE ANY LIABILITY IN CONNECTION WITH ANY PRODUCT SOLD HEREUNDER IN EXCESS OF THE PURCHASE PRICE FOR SUCH PRODUCT.
8. *Waiver.* No claim or right arising out of a breach of this terms and conditions can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
9. *Taxes.* All applicable sales, use, excise or other taxes levied by federal, state or local authorities will be paid by the Purchaser unless otherwise agreed in writing.
10. *Payment Terms, Service Charges and Costs.* Invoices will be dated as of the date of the shipment, and unless otherwise agreed to in writing, are payable 30 days from invoice date. Late charges at the rate of 1-1/2% per month may be charged on past due accounts. We reserve the right to withhold shipment of new products on all past due accounts and



with respect to accounts which are not creditworthy as determined by Roto, in Roto's sole discretion. In the event that Roto shall bring any action upon any default in performance or observance of any covenant herein, Roto shall be entitled to recover its costs and expenses, including reasonable attorneys' fees in addition to any and all other remedies available to it.

11. *Time for Bringing Action.* Any and all actions brought by Purchaser for a breach of or otherwise in connection with these terms and conditions must be commenced within one (1) year after the cause of action has occurred.
12. *Terms and Conditions are a Contract.* These terms and conditions constitute a contract between Purchaser and Roto, notwithstanding that neither party signs these terms and conditions. Purchaser has accepted these terms and conditions by placing an order with Roto for products.