



## Piercan USA, Inc. Terms & Conditions

### 1. INCORPORATION OF THESE TERMS

Every contract for the sale or supply of goods by Piercan USA, Inc. (“**Seller**”) is subject to these terms and conditions (“**Terms**”) to the exclusion of all other terms, conditions, or contract obligations. Any offer, quotation, or acceptance of order issued by Seller is given on the basis that the contract of sale is subject only to these Terms. All orders placed by you (“**Buyer**”) shall be deemed to be on these Terms and no terms proposed or referred to by Buyer (whether in any order, acceptance form or otherwise) shall form part of any contract of sale between Buyer and Seller.

### 2. THE CONTRACT

A. Each contract (the “**Contract**”) for the sale of Seller’s goods (“**Goods**”) to Buyer shall be concluded by Seller’s acceptance of Buyer’s order, whether orally or in writing, and the Contract shall be created only on such acceptance on these Terms and not otherwise in any manner.

B. Buyer expressly acknowledges that (except as set forth in Section 2.C) there are no terms or representations other than as expressly contained in these Terms which have induced Buyer to enter into the Contract and there is no collateral contract pursuant to which Buyer has entered into the Contract.

C. No modification of these Terms shall be effective and bind Seller in any manner whatsoever unless: (i) expressly agreed in writing by Seller in any contract between Buyer and Seller to which these Terms are attached or (ii) expressly agreed in writing by a duly authorized signatory of Seller and Buyer.

### 3. CANCELLATION

Buyer shall not be entitled to cancel any order placed with Seller, once this order has been accepted by Seller. If such prior written consent is given by Seller, Buyer shall affect cancellation only by notice in writing to Seller, which notice shall specify and identify the order placed by Buyer, including the date of order, full details of Buyer and the delivery address, the number, quantity, and description of the Goods ordered. If cancellation is affected by Buyer after the date of acceptance by Seller of Buyer’s order, such written consent of Seller shall be conditional on the Goods (if dispatched) being returned (at Buyer’s sole cost) to Seller (at the location specified in the consent) in exactly the same state (including state of packing and packaging) as they were on delivery. Buyer shall indemnify Seller against all reasonable costs and expense (including, without limitation, administration, packaging, and carriage costs but excluding any loss of profit or opportunity) incurred by Seller in affecting such cancellation.

P I E R C A N G L O B A L O F F I C E S

Headquarters: Impasse de Marcareux-14520 Port en Bessin, France – +33 2 31 21 73 80

Paris Office: 17/23 Rue Marcel Dassault-93140 Bondy, France — +33 1 45 88 66 27

San Diego Office: 160 Bosstick Blvd, San Marcos CA. 92069-United States — +1 (760) 599 4543

[www.piercan.com](http://www.piercan.com)



#### **4. THE GOODS**

A. All descriptions, specifications and illustrations contained in Seller's catalogues, prices lists or advertisements or otherwise communicated to Buyer are intended to present a general idea of the Goods described therein and shall not form any part of the Contract.

B. Seller shall be entitled, in its sole discretion, to discontinue the supply of any Goods or to amend or modify any Goods without notice to Buyer. In the event that Seller is, by reason of any such circumstance, unable to supply the Goods as ordered by Buyer, Seller shall notify Buyer and either Buyer or Seller shall be entitled to terminate the Contract, without any liability.

C. Except as expressly provided in these Terms, Buyer shall take the Goods at its own risk as to their quality, condition, or sufficiency for any purpose.

D. If a sample of the Goods has been presented to and/or inspected by Buyer, it is expressly agreed and acknowledged that such sample was so presented and inspected solely to enable Buyer to assess the quality and not to constitute a sale by sample.

#### **5. THE PRICE**

All prices quoted by or on behalf of Seller, are exclusive of taxes unless otherwise specified or agreed in writing. Seller reserves the right to amend such prices at any time in its sole discretion.

#### **6. PAYMENT**

A. All sums due from Buyer in respect of each delivery shall be invoiced upon shipment. All invoices shall be paid in full, without set off or deduction in any manner (except when expressly agreed in writing by Seller), on the due date specified on the invoice. No anticipation discount may be taken on invoices paid prior to their due date.

B. During any period in which sums due by Buyer to Seller on any Contract remain unpaid after the due date, Seller shall be entitled to suspend delivery of Goods to Buyer under any Contract between Seller and Buyer.

C. All sums due from Buyer to Seller under any Contract shall bear interest from the due date until payment is made in full at 1.5% of the invoice amount, with a minimum of \$50.

D. Seller reserves the right to impose a credit limit on Buyer (and to amend such credit limit at any time) and Seller shall be entitled to suspend deliveries of Goods to Buyer if and for the period of time in which any credit limit may be exceeded.



## 7. DELIVERY

A. Delivery dates (if any) stated by Seller are estimates only and the time of delivery shall not be of the essence and cannot be made so, by any act or notice of Buyer. Seller will not deliver to PO boxes.

B. Seller shall not be liable in any manner whatsoever to Buyer for any non-delivery or late delivery, for whatever reason or for any loss (whether direct or indirect) including without limitation, any consequential loss or lost opportunity arising (whether directly or indirectly) from any non-delivery or late delivery of all or any part of the Goods by Seller.

C. In the event of non-delivery of the Goods, Buyer shall inform Seller by notice in writing within fourteen (14) days of receipt of invoice.

D. If the delivery of Goods is delayed or prevented by circumstances outside the reasonable control of Seller (including without limitation, acts or omissions of third parties): (i) any period specified for delivery (if any) shall be extended by such time as the cause preventing or hindering delivery subsists; provided that either the Seller or Buyer may, by notice in writing, terminate the Contract when the period for delivery has been, or is reasonably anticipated to be, extended for a period in excess of six (6) months and (ii) subject only to any termination under sub paragraph (i) above, Seller shall be entitled to deliver part only of the Goods and Buyer shall accept the same under the Contract.

E. Subject to Section 7.B, if delivery of any items of Goods has not been made within six (6) months of any delivery date specified by Seller on Contract, Buyer shall be entitled to cancel its order in respect of such items by notice in writing to Seller.

## 8. PASSING OF RISK AND PROPERTY

A. Risk in the Goods shall pass to Buyer when the goods are handed over to the first carrier for transmission to the Buyer in accordance with the contract.

B. The Goods shall remain Seller's property until Seller has received payment in full for such Goods. Until title in the Goods passes, Buyer shall: (i) hold the Goods for and on behalf of Seller; (ii) store the Goods in such a manner that they can be identified as Seller's property; and (iii) keep the Goods separate from Buyer's own property and the property of any third party.

C. Notwithstanding such retention of title: (i) the Goods shall be at Buyer's risk from the time of transfer to carrier and Buyer shall insure them against loss or damage accordingly and in the event of such loss or damage shall hold the proceeds of such insurance on behalf of Seller, as trustee for Seller; and (ii) Buyer may dispose of the Goods in the normal course of trading as agent for Seller (but with no authority to create privity of contract between Seller and any Buyer customer(s)) provided that Buyer shall assign to Seller all its rights against its customer(s) in respect of any such disposal and shall promptly on request by Seller, execute any documents required to perfect any such assignment.



D. The Buyer grants to the Seller, its agents, representatives, and employees an irrevocable license to enter any premises where the Goods are stored in order (i) to inspect compliance by the Buyer with its obligations under this clause 9; and or (ii) take possession of the Goods which remain the Seller's property.

## 9. INSPECTION AND QUALITY OF GOODS

Buyer shall inspect the Goods immediately on delivery and shall within 30 working days of delivery give notice to Seller of any alleged (i) defect in the Goods, (ii) damage in transit to the Goods, or (iii) discrepancy between the Goods as delivered and the Goods stated on the delivery note. If Buyer shall fail to give such notice with such 30-day period, Buyer shall be deemed to have accepted the Goods.

## 10. RETURN MERCHANDISE AUTHORIZATION

A. Should the Buyer give notice to Seller of any alleged defect, damage, or discrepancy in the Goods, a valid Return Merchandise Authorization number ("**RMA**") must be requested before a product is returned to Seller. The RMA is required for all shipments made to Seller where the authorization is issued by the local Seller Representative.

B. Returns without a valid RMA number will not be processed and will be returned to Buyer at Buyer's expense. Seller can only and exclusively accept the product(s) identified on the RMA form. If a shipment includes products for which a return authorization is not filled in, it will not be processed and will be returned to Buyer at Buyer's expense.

C. The delivery documents, as well as the shipments, must be clearly identified with the RMA number. If there is no default or if the indications were incorrect, Seller reserves the right to charge the Buyer with the transport, customs fees, and the cost of return.

## 11. SELLER LIABILITY

A. These Terms set out Seller's entire liability in respect of the Goods and the supply of Goods to Buyer.

B. Seller's liability under these Terms shall be in lieu of and to the exclusion of all other liability, whether under any other warranties, conditions, or terms, express or implied, by law or otherwise and whether in contract, tort (including negligence) or any under any other legal theory, including any liability in respect of the quality, condition, description, or fitness for any particular purpose of the Goods to the maximum extent permitted by applicable law.

C. SELLER IS NOT LIABLE TO BUYER FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THE SALE OF THE GOODS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN



REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SALE OF GOODS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THAT PART OF THE PURCHASE PRICE APPLICABLE TO THE PORTION OF PRODUCT GIVING RISE TO BUYER'S CLAIM FOR SUCH DAMAGES.

## 12. INTELLECTUAL PROPERTY RIGHTS

A. The supply of Goods by Seller shall not confer any rights upon Buyer to use any of Seller's intellectual property rights in any manner whatsoever and Buyer shall not amend or modify any trademarks or logos of Seller appearing on or in connection with the Goods.

B. Any specifications, plans, drawings, process information, patterns, designs, formulae, or other processes (the "Specifications") in connection with the Goods which may be supplied or disclosed to Buyer shall remain the sole property of Seller (or its licensors) and the supply of Goods by Seller shall not confer any rights upon Buyer to use the same in any manner whatsoever. Buyer shall keep all Specifications confidential and shall not disclose the same to any third party and shall return all Specifications to Seller promptly at any time at the request of Seller.

## 13. FORCE MAJEURE

In the event that any circumstance outside the reasonable control of Seller and or its suppliers prevents Seller from performing its obligations under the Contract: (i) Seller shall not be liable for any such failure to perform its obligations for the period in which such force majeure circumstances may continue and (ii) Seller shall be entitled by service of notice in writing to Buyer to terminate the Contract, without further liability.

## 14. RESTRICTIONS

A. Buyer is expressly prohibited from advertising for resale or selling the Goods on any website, application, or other online point of presence (including on any online marketplace), unless a duly authorized signatory of Seller and Buyer have agreed by contract or in writing.

B. Except as authorized in writing by Seller, Buyer shall not sell the Goods to any person or entity other than an End-User. An "**End-User**" means any purchaser of the Goods from Buyer who is the ultimate consumer for whom the Good(s) is designed and who does not intend to resell the Good(s) to a third party. Buyer shall not sell or offer for sale any product bearing a trademark, copyright, patent, or name associated with Seller, which Buyer purchased or obtained from a source other than directly from Seller.

C. Except as authorized in writing by Seller, Buyer shall not export the Goods outside of the U.S. or Canada (the "**Territory**"); Buyer may only sell and advertise for sale the Goods within the Territory; and Seller expressly prohibits Buyer from soliciting or consummating sales outside the Territory.



D. LIQUIDATED DAMAGES. FOR EACH OCCASION THAT BUYER BREACHES SECTION 13 OF THESE TERMS AND IN ADDITION TO ALL OTHER REMEDIES AVAILABLE TO SELLER UNDER THESE TERMS AND AT LAW, BUYER AGREES TO PAY SELLER, AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, THE GREATER OF THE FOLLOWING AMOUNTS: (I) THE COSTS AND FEES ASSOCIATED WITH SELLER'S INVESTIGATION AND ENFORCEMENT REGARDING THE BUYER'S UNAUTHORIZED SALES; OR (II) FIVE TIMES (5X) THE MSRP OF THE GOODS PER UNIT OF GOODS. BUYER AND SELLER AGREE THAT THESE DAMAGES ARE NOT PUNITIVE, THAT SELLER'S DAMAGES DUE TO BREACH OF SECTION 13 OF THESE TERMS ARE DIFFICULT TO QUANTIFY, AND THAT THESE LIQUIDATED DAMAGES ARE A REASONABLE APPROXIMATION OF SELLER'S DAMAGES IN THE EVENT OF A BREACH.

E. Notwithstanding anything to the contrary in these Terms, this Section 14 only applies to sales within the United States and Canada.

## 15. GENERAL

A. No waiver or delay by Seller in exercising its rights under any Contract shall prejudice such exercise or any other or future exercise.

B. These Terms shall apply save as and to the extent that in so far as they may be declared unenforceable, invalid, illegal or otherwise in conflict with law and any term or part thereof so declared shall be severed from these Terms without affecting the enforceability or validity of any other term or terms or any other term of the Contract between Buyer and Seller.

C. The Contract shall be governed by and interpreted in accordance with the laws of the state of California, USA, excluding its conflict of law rules.

D. Buyer shall not assign any benefit under the Contract.

E. Buyer acknowledges that any business contact information that Seller receives from Buyer or Buyers' personnel in connection with the sale of Goods may be processed for providing the Goods and marketing the Goods to Buyer. Buyer acknowledges that it has secured the rights for Seller to process business contact information as described herein. Buyer is solely responsible for ensuring that the data subjects to which such business contact information pertains have received all notices and given all consents that may be necessary to permit Seller to engage in such processing activity under applicable data protection law.