

Terms & Conditions

The following are the Terms and Conditions under which Composiflex, and their designated representatives, successors, and assigns quote and sell their products.

- 1. Terms and Conditions.** These Terms and Conditions shall apply to quotations and purchase orders issued and accepted or other contractual commitments to buy and sell Composiflex' products (collectively "Orders"). Composiflex hereby gives notice of its objection to any different or additional terms that may be included by the person, firm, or entity that places an Order ("Buyer"). These Terms and Conditions will become a binding contract only when Composiflex sends a written or electronic acceptance of an Order to Buyer. If Buyer has not otherwise accepted these Terms and Conditions, Buyer's acceptance of any products delivered by Composiflex pursuant to any Order shall constitute Buyer's acceptance of these Terms and Conditions with respect to such Order. These Terms and Conditions shall govern each Order notwithstanding any different, conflicting, or additional terms and conditions that may appear on any form submitted by Buyer unless specifically agreed to in writing in Composiflex's acceptance.
- 2. Prices.** Prices for custom products shall be as stated in Composiflex's quotation. Stenographic and clerical errors, if any, made by Composiflex in any price quotation are subject to correction by Composiflex. Prices are exclusive of all sales, use, and like taxes. Any tax Composiflex may be required to collect or pay upon the sale or delivery of the Products shall be for the account of Buyer, who shall promptly pay the amount thereof to Composiflex or the taxing authority as required.
- 3. Expedite Fee.** An agreed upon expedited order which causes overtime or other additional costs, will be assessed a minimum 10% Expedite Fee with a minimum fee of \$75.00. Order expedition may result in an expedite fee in excess of 10%.
- 4. Set Up Fee.** A set up charge may be required for a less than full panel/lot quantity for springs, laminates, and other products.
- 5. Termination for Convenience.** Cancellation requests from the Buyer require the written consent of Composiflex. Orders for products shall be terminable by Buyer on written notice received and accepted by Composiflex prior to delivery by Composiflex to the carrier for shipment. Upon termination by Buyer of an Order: (a) with respect to products manufactured prior to termination, Buyer shall be liable for the full price; (b) with respect to products not fully manufactured, Buyer shall be liable for all direct and indirect costs and expenses incurred by Composiflex in fulfilling the Order, including all materials purchased, commitments made, and tooling work performed. Buyer is obligated to pay termination charges within 30 days of invoice date.
- 6. Deliveries and Delivery Quantities.** Composiflex will make all reasonable efforts to adhere to the shipping or delivery dates requested by Buyer. Composiflex will make every attempt to accommodate shipping instructions requested by the Buyer provided they do not conflict with any of the terms and conditions set herein. Requests for specific methods of transportation must be made at the time of order placement. Composiflex shall not be liable for any damages, loss, or expense of Buyer for failure to meet any shipping or delivery dates for any reason whatsoever. Unless otherwise agreed in writing, all products shall be delivered Ex Works, Erie, PA, freight collect. Buyer shall accept over-runs and under-runs on each individual item of custom product purchased hereunder, not exceeding ten percent (10%) of the quantity of product ordered. Where closer control of quantity is required by Buyer, special arrangements require the written consent of Composiflex. Any claims for shortages in the quantity of product delivered to Buyer must be made to Composiflex, in writing, within fifteen (15) calendar days from the date of delivery. Notwithstanding the foregoing, Composiflex may make partial deliveries of products. In the event of a shortage of any product or delays in delivery caused by force majeure as provided in Paragraph 15, below, Composiflex reserves the right to apportion products among its customers in its sole discretion. A Certificate of Conformance must be

requested prior to shipment.

7. **Inspection.** Buyer acknowledges that Composiflex inspects the products sold hereunder on a sampling basis only, and that such inspections will be conducted in accord with Composiflex's standard quality control practices. If one hundred percent (100%) inspection is required by Buyer, arrangements must be made with Composiflex before an Order is placed and must be memorialized in writing. Additional inspection requirements may affect the price. Notwithstanding the foregoing, with respect to custom products, Buyer assumes full responsibility for inspecting all custom products upon delivery.
8. **Packaging and Packing.** Standard packaging and packing methods selected by Composiflex will be used unless otherwise agreed to in writing by both parties. Additional packaging and packing costs incurred at Buyer's request shall be payable by Buyer and added to the applicable invoice.
9. **Payment and Credit Terms.** Composiflex' payment terms are net thirty (30) days from the date of the invoice for Buyers who have an established credit record with Composiflex, which shall be determined by Composiflex in its sole discretion. In the event that Buyer fails to make payments as required herein, Buyer shall pay interest at a rate of one-and-one-half percent (1.5%) per month on the unpaid balance, together with the costs of collection and reasonable attorneys' fees, all without relief from valuation and appraisal laws. Composiflex shall have a security interest in all products delivered to Buyer under an Order until Composiflex receives payment in full as provided herein.
10. **Warranties and Remedies.** Composiflex warrants that at the time of delivery for shipment: (a) stock products delivered hereunder shall be free of defects in workmanship and material and conform to any product descriptions that are made a part of the Order; and (b) custom products delivered hereunder shall conform to any Buyer specifications that are made a part of an Order and accepted in writing by Composiflex. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, COMPOSIFLEX MAKES NO WARRANTY REGARDING PRODUCTS DELIVERED HEREUNDER (OTHER THAN WARRANTY OF TITLE) AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER CREATED BY CONTRACT OR BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES MADE HEREIN ARE MADE SOLELY TO BUYER AND SHALL NOT EXTEND TO OR BE ASSIGNABLE TO BUYER'S CUSTOMERS, INCLUDING BUT NOT LIMITED TO ANY CUSTOMER WHO MAY BE A CONSUMER AS THAT TERM IS DEFINED UNDER THE MAGNUSON-MOSS WARRANTY-FEDERAL TRADE COMMISSION IMPROVEMENT ACT. If any product delivered hereunder fails to conform to the foregoing warranty and such product (or non-conforming part thereof) is returned to Composiflex by Buyer, then Composiflex, at Composiflex's sole option, shall repair or replace such product (or non-conforming part) and make such repaired or replacement product (or part) available for shipment to Buyer. Composiflex's obligation to repair or replace is expressly conditioned on: (a) Buyer obtaining written return authorization and Return Merchandise Authorization (RMA number from Composiflex prior to returning such non-conforming product; and (b) Composiflex's receipt of such non-conforming product within thirty (30) calendar days after delivery. Products returned without prior written authorization or not clearly marked with our assigned RMA number will not be accepted. Composiflex' remedial obligations shall be excused if the product (or part) has been subjected to alteration, misuse, abuse, or improper storage by Buyer. Unless Composiflex expressly agrees in writing in advance, no set-off, allowance, or credit shall be allowed for any non-conforming product. The repair or replacement remedy as set forth in this paragraph shall be Buyer's sole and exclusive remedy for non-conforming products delivered hereunder.
11. **Usage.** Buyer is responsible for insuring compatibility between Composiflex' product and any other products or components that may be combined therewith or placed therein. Buyer assumes all risk and liability for results obtained by the use of the products sold hereunder, whether used singly or in combination with other products. Buyer shall indemnify Composiflex against: (a) any and all loss, liability, damage, injury, claim, cause of action, or proceeding arising out of the sale or use of Composiflex's product, whether singly or in combination with other products; and (b) any and all costs and expenses, including attorneys' fees, related thereto. To the fullest extent permitted by applicable law, in the event of an in connection with any resale of Composiflex's product by Buyer in any fashion whatsoever, Buyer shall require and obtain from its

customers restrictions of warranties and limitations and waivers of liability, and other limited remedies, defenses, and protections running to and for the benefit of Composiflex, including indemnity, at least equal to and including such items set forth herein, in order to maintain and provide to Composiflex throughout the channels of distribution through and including the ultimate use and consumption of Composiflex's product the limitations and waivers of liability, remedies, defenses, and protections set forth herein without any enlargement whatsoever of liability of Composiflex as if the sale hereunder to Buyer were to and for the ultimate use or consumption of Composiflex's product. Buyer shall insure that all information, labels, and other warnings concerning Composiflex's product provided to Buyer by Composiflex, if any, are kept and delivered with Composiflex's product throughout the channels of distribution. Without limiting Buyer's obligations as stated elsewhere herein, Buyer shall indemnify Composiflex against any and all loss, liability, damage, injury, claim, cause of action, or proceeding that may result from Buyer's failure to adhere to the covenants set forth in this paragraph, and from and against any and all costs and expenses, including attorneys' fees, related thereto.

12. **Custom Products.** The following provisions apply to all sales of custom products sold under an Order. In the event that Composiflex fabricates, or manufactures any tools, dies, forms, fixtures, or patterns (collectively "Tools") necessary for the manufacture of custom products sold under an Order, then Buyer shall pay Composiflex for the full price of such Tools and such Tools shall remain the property of Composiflex until Composiflex receives full payment from Buyer. In the event that Composiflex is required to re-design, repair, or replace any Tools, Buyer shall reimburse Composiflex for all such costs, including tooling and re-tooling costs. Buyer acknowledges that such Tools will be based on technical information and drawings provided by Buyer to Composiflex, and Buyer agrees not to assert any claim against Composiflex with respect to any such technical information or drawings that Buyer may have disclosed to Composiflex. Composiflex shall comply with all specifications, drawings, quality requirements, and procedures specified by Buyer, but once Buyer has agreed in writing to the design for a Mold, then Buyer shall be solely responsible for the proper form, fit, and function of the products manufactured using the Mold. Composiflex shall have no liability to Buyer for (and without limiting Buyer's obligations as stated elsewhere herein, Buyer shall indemnify Composiflex against) any claims, loss, or liability, including but not limited to claims of third parties, arising out of or relating in any way to the Tools or the products manufactured using such Tools, whether based on patent, trademark, copyright, defective design, or product liability, and whether arising out of contract, tort, or strict liability, except to the extent such claim arises out of the negligence or willful misconduct of Composiflex or its employees. In the event that Buyer provides Tools to Composiflex, then Composiflex shall have no liability to Buyer for any loss or damage to such Tools, unless such loss or damage is due solely to the gross negligence or intentional misconduct of Composiflex or its employees. Buyer shall be solely responsible for obtaining and paying for any insurance on such Tools. To the fullest extent permitted by applicable law, Composiflex shall retain a security interest in the Tools (whether created by Composiflex or provided by Buyer) in an amount equal to the total of: (a) any unpaid amount due to Composiflex hereunder for cost of fabrication, casting, manufacturing, repairing, or re-tooling of such Tools; plus (b) any unpaid amount due to Composiflex for any products manufactured by Composiflex using the Tools. Buyer shall, at Buyer's sole cost and expense, promptly remove the Tools from Composiflex' facility after the last production run using such Tools, provided that Buyer has fully paid for such Tools and re-tooling costs, if any. In the event that Buyer fails to do so within twenty four (24) months after the last production run using such Tools, Composiflex shall have the right to dispose of such Tools and shall have no liability to Buyer for the Tools or the disposal thereof.
13. **Limitation of Liability.** IN NO EVENT SHALL COMPOSIFLEX BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY ORDER OR THE PRODUCTS SOLD THEREUNDER, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO STRICT LIABILITY, WHETHER AT LAW OR IN EQUITY, INCLUDING BUT NOT LIMITED TO, LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT AND PRODUCT LIABILITY CLAIMS. IN NO EVENT SHALL COMPOSIFLEX'S AGGREGATE LIABILITY TO BUYER WITH RESPECT TO ANY PRODUCT DELIVERED PURSUANT TO ANY ORDER EXCEED THE AGGREGATE COMPENSATION PAYABLE TO COMPOSIFLEX HEREUNDER FOR THE PRODUCTS COVERED BY SUCH ORDER. No action, whether in contract or tort, arising out of or in connection with an Order, may be brought by either

party more than eighteen (18) months after the cause of action has accrued, except that an action for nonpayment may be brought by Composiflex at any time within thirty-six (36) months from the date payment become ninety (90) days past due.

14. **Patents/Indemnity.** Without limiting Buyer's obligations as stated elsewhere herein, Buyer shall indemnify Composiflex against: (a) any claim, loss, liability, suit, or proceeding based on an allegation that any product furnished hereunder in compliance with Buyer's instructions or specifications constitutes an infringement of any patent, trademark, trade secret, or copyright; and (b) any judgment or other recovery therein. Buyer shall promptly pay or secure any judgment or recovery and pay Composiflex's reasonable costs and expenses, including attorneys' fees, in defending any such claim, action, or proceeding.
15. **Force Majeure.** Neither Buyer nor Composiflex shall be liable to the other for any failure to perform, or delay in the performance of any obligation hereunder (except the obligation to pay amounts due hereunder), to the extent that such failure or delay is due to causes beyond the reasonable control and without the fault or negligence of the party whose performance is prevented or delayed, provided that the party whose performance is prevented or delayed: (a) provides prompt written notice to the other party of such circumstances; and (b) makes reasonable efforts to perform or complete performance hereunder despite the impediment to performance. Without limiting the generality of the foregoing language, such causes shall include fire, storm, flood, act of God, war, explosion, sabotage, act of terrorism, strikes or other labor trouble, shortages, or inability to secure transportation, raw materials, machinery and/or other equipment necessary for the manufacture of the product, the expropriation of Composiflex's plant, the product and/or raw materials in whole or in part by any governmental authority, acts of the federal government, any state or local government or any agency thereof and any other like cause interfering with the production or transportation of the product.
16. **Cancellation.** Any Order may be cancelled by Composiflex upon Buyer's breach or repudiation thereof for any reason, including bankruptcy, reorganization or insolvency, or for the appointment of a receiver or any assignment for the benefit of creditors and without regard to materiality of such breach or repudiation, provided that such breach shall not be cured, or such repudiation is not retracted, within five (5) calendar days after Composiflex provides written notice thereof to Buyer.
17. **Customer Service.** To place an order, obtain a quote, establish credit, or for other inquiries, contact Customer Service, available 8:00 a.m. through 4:30 p.m. EST located at:
18. **General Provisions.**
 - a. These Terms and Conditions and any sale hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, notwithstanding any choice of law provision that might apply the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Orders hereunder.
 - b. If any controversy or claim arises out of or relates to this Release, or its breach, termination, or validity, and if the controversy or claim cannot be resolved through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules and Optional Rules for Emergency Measures of Protection, before resorting to arbitration with the AAA. Any controversy or claim that is not resolved via mediation shall be resolved by arbitration administered by AAA in accordance with its Commercial Arbitration Rules and Optional Rules for Emergency Measures of Protection. The number of arbitrators shall be one (1) unless the amount in dispute exceeds five hundred thousand dollars (\$500,000), in which event it shall be three (3). Judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Any mediation and/or arbitration conducted hereunder shall be conducted in Erie, Pennsylvania. The foregoing is an alternative dispute resolution clause. By agreeing to alternative dispute resolution, the parties voluntarily give up the right to sue each other in court, including the right to a trial by jury, except as provided for by the rules of AAA.
 - c. Buyer may not assign any Order or any interest therein without the prior written consent of Composiflex. Any actual or attempted assignment without such consent shall be void and shall entitle Composiflex to cancel

the Order.

- d. Buyer shall comply with all applicable federal, state and local laws, regulations, and ordinances. Export of any products purchased pursuant to any Order may be subject to export licenses control by the United States government, and it is Buyer's sole responsibility to notify Composiflex of any license requirements and to obtain any licenses which may be required under the laws of the United States, including but not limited to the Export Administration Act and related regulations.
- e. Each Order is for the sale of goods, and the relationship between the parties is that of buyer and seller. Nothing herein shall be deemed to constitute a hiring, partnership, or joint venture between the parties.
- f. All rights and remedies whether conferred hereby or by any other instrument of law shall be cumulative, and may be exercised singularly and concurrently.
- g. Failure by Composiflex to enforce any term or condition herein shall not be construed as a waiver of that or any other term or condition. No waiver shall be binding against Composiflex unless written consent is provided by Composiflex, and any such waiver shall be limited to the particular instance referenced.
- h. In the event that any provision of these Terms and Conditions is held invalid under any applicable statute or rule of law, then to the maximum extent permitted by law, such provision shall be deemed severable from these Terms and Conditions, and the remainder of the Terms and Conditions shall be construed, to the extent possible, in accord with the original intent of the parties.
- i. Each Order and these Terms and Conditions constitute the entire agreement between Composiflex and Buyer with respect to the Order, and superseded all proposals, whether verbal or written, all previous negotiations, and all other communications between the parties.