

## **COLT'S MANUFACTURING COMPANY LLC**

### **TERMS AND CONDITIONS OF SALE**

#### **1. SCOPE**

The Terms and Conditions ("Terms") contained herein shall apply to all Colt quotations, offers, and sales of products and/or services, except to the extent that these Terms conflict with a written contract, sales agreement or distributor agreement signed by both Colt and Buyer. Colt quotations, offers, and sales are expressly conditioned upon Buyer's acceptance of the Terms herein, which acceptance may be express or implied. Colt expressly rejects any Buyer terms and conditions, including but not limited to any Buyer terms and conditions which have been or may in the future be included as part of any purchase order, procurement document, or other communication from Buyer. Colt's failure to object to provisions contained in any communication from buyer shall not be deemed to waive any provisions herein, or to accept any different terms and conditions communicated by Buyer. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry.

#### **2. PRICE, TAXES AND QUOTATIONS**

Price proposals by Colt for products and/or services are valid for 30 days from issuance, unless otherwise provided by Colt in writing. Except where specifically indicated in Colt's written price proposal, all prices are exclusive of applicable taxes, including but not limited to revenue or excise taxes, value added taxes, import duties (including brokerage fees) or other taxes applicable to the manufacture or sale of any product. All applicable taxes shall be the responsibility of and paid by Buyer unless Buyer provides a proper tax exemption certificate. Any amounts paid at any time by Colt that are the responsibility of Buyer, such as export license fees, shall be invoiced to buyer and shall be reimbursed by Buyer to Colt.

#### **3. TIME OF DELIVERY**

Colt reserves the right to ship product in advance of any Confirmed Shipping Date. Time of delivery by Colt is not of the essence.

#### **4. PAYMENT TERMS**

Payment terms shall be net thirty (30) days from the date of invoice. If amounts are not paid when due, Buyer agrees to pay interest on any unpaid balance at a rate of one and one half percent (1.5 %) per month, or the maximum rate permitted by law, whichever is less. All payments are to be in United States dollars. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. Buyer agrees to pay Colt's reasonable costs to collect delinquent accounts, including but not limited to attorney fees and costs of legal action.

## 5. NON-CONFORMING DELIVERY AND RISK OF LOSS

(a) All sales are FOB origin. Risk of loss and title shall pass to Buyer as soon as the products have been placed with a transport agent. Colt shall be entitled to retain a security interest in the products until Buyer's final payment to Colt.

(b) Buyer shall notify Colt in writing of any visible defects, quantity shortages or incorrect product shipments, within seven (7) days of receipt of products or services. Failure to so notify Colt within seven (7) days shall constitute acceptance and be deemed an unqualified waiver by Buyer of any rights to reject or return products or services on the basis of visible defects, shortages or incorrect shipments.

## 6. ORDER CANCELLATION

(a) Buyer's Cancellation for Convenience: Buyer may cancel an order for convenience on the following terms: (i) For standard Colt products, Buyer may cancel delivery without penalty if the cancellation is more than thirty (30) days from the Confirmed Shipping Date; (ii) For services, nonstandard parts, custom products, or standard parts with minimum usage, Buyer may cancel an order by providing written notice to Colt more than ninety (90) days in advance of the Confirmed Shipping Date, except that (1) Buyer shall accept delivery and pay Colt the contract price for all products and services completed at the time of such cancellation; (2) for products which are in the work-in-process inventory and services which Colt has not completed at the time of cancellation, the Buyer shall pay Colt an amount equal to the percentage complete multiplied by the contract prices; and (3) Buyer shall pay promptly to Colt the costs of settling and paying claims relating to termination of the work of Colt's subcontractors and vendors, as well as accounting, legal, and clerical costs relating to the cancellation.

(b) Buyer's Cancellation for Default: If Colt does not deliver products or services by an order's Confirmed Shipping Date; Buyer provides written notice with at least sixty (60) days for Colt to cure; and, after such cure period, Colt is unable to complete delivery, then Buyer may cancel the order in whole or in part. Under no circumstances shall any delay in receiving a necessary approval from any government entity for shipment or receipt of product or services give rise to a default on the part of Colt, or to Buyer's right to cancel an order in whole or in part. Notwithstanding any termination of Colt for default, Buyer shall accept and pay Colt the contract price for all conforming products and services delivered by Colt prior to such termination.

(c) Colt's Cancellation: Colt shall have the right to cancel any order in whole or in part, without notice to Buyer, in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or otherwise in Colt's judgment becomes unable to meet its financial obligations in the normal course of business. Nothing in this Agreement shall be construed to limit any right or remedy of Colt at law or in equity. All rights and remedies of Colt under this Agreement and at law and in equity are cumulative and not mutually exclusive, and the exercise of one shall not be deemed waiver of the right to exercise any other.

## 7. LIMITED WARRANTY

Except as specified below or otherwise agreed in writing, products sold hereunder shall be free from defects in materials and workmanship and shall conform to Colt's published specifications or other specifications accepted in writing by Colt for a period of one (1) year from the date of shipment of the products. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident or modification. Colt shall make the final determination as to whether its products are defective. Colt's sole obligation for products failing to comply with this warranty shall be, at its option, to replace or issue credit for the nonconforming product where, within fourteen (14) days of the expiration of the warranty period, (i) Colt has received written notice of any nonconformity; (ii) after Colt's written authorization, Buyer has returned the nonconforming product to Colt; and (iii) Colt has determined that the product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse. **THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COLT DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS.**

## 8. LIMITED LIABILITY

Neither Colt nor Buyer shall be liable for delay, lost revenue, lost profits, loss of goodwill, or for any other incidental, consequential, special or punitive damages arising out of or relating to the sale of any Colt products or services, or performance or nonperformance of this Agreement. Colt's maximum aggregate liability to Buyer arising out of or relating to this Agreement, including but not limited to any express or implied warranty, condition, or representation, shall be the price of the affected products or services for which Buyer has paid Colt under this Agreement.

## 9. CONFIDENTIAL INFORMATION

Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations to the other hereunder), divulge or communicate to any third party any information provided by the other that it reasonably knows to be confidential.

## 10. FORCE MAJEURE

Colt shall not be liable for any damage or penalty for delay in delivery, or for failure to give notice of delay, when such delay is due to causes beyond the reasonable control of Colt, including but not limited to the elements, acts of god, acts of the Buyer, act of civil or military authority, war, terrorist acts, riots, concerted labor action, or shortages of materials. The delivery date shall be deemed extended for a period of time equal to the time lost due to any such excusable delay.

## 11. COMPLIANCE WITH LAWS

Buyer shall comply with Federal, state, and local laws, rules and regulations pertaining to the goods or services purchased or received under this Agreement. Buyer is advised that the goods and services purchased or received from Colt under this Agreement, including but not limited to any related drawings, samples, or technical manuals, may be restricted under the Arms Export Control Act, International Traffic in Arms Regulations (ITAR), Export Administration Act, and/or Export Administration Regulations (EAR). In addition, assembly of Colt parts or placing other accessories onto Colt products, and/or their transport or resale may violate applicable laws, rules or regulations and are done at Buyer's sole risk. Buyer expressly assumes all responsibility and all liability for its conduct and compliance with all laws, rules and regulations, and Colt expressly disclaims any responsibility or liability therefor. Buyer agrees to indemnify and hold Colt harmless from all sums, costs and expenses as a result of any and all loss, expense, damage, liability, claims, and demands, either at law or in equity, arising out of or relating to any of Buyer's actions or failures to act.

## 12. ASSIGNMENT AND SUBCONTRACTING

Colt shall be entitled at all times to delegate or assign its rights under the contract (in whole or in part), or to subcontract any part of the work or services to be provided under the contract, as it deems necessary or desirable.

## 13. NOTICES

Any notice hereunder shall be deemed to have been given if sent by prepaid first class mail to the party concerned at its last known address. Notice to Colt shall be to Colt's Manufacturing Company LLC, P.O. Box 1868, Hartford, CT 06144, Attn: Legal Dept.

## 14. WAIVER

Failure by Colt to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## 15. APPLICABLE LAW

Any dispute arising out of or related to an Agreement to which these terms and conditions apply shall be resolved exclusively under the laws to the State of Connecticut and in the state or federal courts located in Hartford, Connecticut, United States of America.

## 16. INTELLECTUAL PROPERTY RIGHTS

Colt reserves all intellectual property rights including, but not limited to, patent, copyright, trade dress, and trade secret. Buyer shall not reverse engineer, decompile, or attempt to do so or the like with respect to any Colt product. The trademarks, trade dress, and service marks of Colt may be used publicly only with prior permission from Colt. Fair use of Colt's trademarks in advertising and promotion of Colt's products is permitted only with proper acknowledgment. The absence of any marking, name or logo shall not constitute a waiver of any intellectual

property rights that Colt may possess in any of its products, service marks or logos. No license is transferred or intended to be by these terms with respect to any Colt product or its associated intellectual property.

#### 17. SEVERABILITY

The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect or impair the validity, legality, or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

#### 18. AMENDMENT OF TERMS

These Terms shall not be waived or amended except by Colt's express written agreement.