

Bobrick Washroom Equipment, Inc.

STANDARD TERMS AND CONDITIONS OF PURCHASE

Applicable to all purchase orders issued by Bobrick Washroom Equipment, Inc., or any subsidiary thereof.

1. Applicability of California Commercial Code. If the order involves the purchase of goods (as opposed to services), it shall be deemed to be a purchase and sale between merchants and the California, Colorado, New York, Oklahoma, or Tennessee Commercial Code governs such transaction as provided herein.
2. Delivery. Time is of the essence with respect to delivery of Bobrick's orders. Delivery of goods shall be made pursuant to the schedule set forth on the order to the place specified on the order unless changed by written instruction by Bobrick prior to shipment. Bobrick shall not be liable to the seller for material commitments or production arrangements made in advance of the time necessary to meet the delivery schedule. Bobrick reserves the right to return, shipping charges collect, all goods received by it in advance of the delivery date set forth in the order by the most expeditious form of land transportation to the seller. If an order by Bobrick calls for delivery in installments, each installment is dependent upon every other installment and delivery of nonconforming goods or a default by the seller of any nature on one installment will substantially impair the value of the whole order and, at Bobrick's option, constitute a breach of the order as a whole if the seller fails to deliver all goods within the time specified on the order. In such event, Bobrick may, at Bobrick's option, decline to accept goods and terminate the balance of the order.
3. Contingencies. Bobrick is not liable for any failure to take delivery of goods or services that are caused by circumstances beyond its control which make such performance commercially impracticable including, but not limited to, acts of God, fire, flood, war, civil unrest, terrorist act, governmental action, accident, labor difficulties, equipment or transportation. In the event Bobrick is so excused from taking delivery of such goods or services, either party may terminate the contract and Bobrick will, at its expense and risk, return any goods involved to the place of shipment by the seller.
4. Identification and Risk of Loss. Identification of any goods purchased pursuant to an order placed by Bobrick shall occur in accordance with Section 2501 of the California Commercial Code. The seller assumes all risk of loss of goods until receipt by Bobrick of goods conforming to the order at the place specified in the order. Subject to Bobrick's rights under the California Commercial Code, title to the goods shall pass to Bobrick upon receipt by it of the goods at the destination designated on the face of the order.
5. Price and Method of Payment. The price paid by Bobrick for goods purchased pursuant to an order shall be that stated on the face of the order. In the event shipment of goods is made in installments, the seller shall have no right to demand payment on delivery of each installment, and payment shall not be required until after the last shipment of goods thereunder is received by Bobrick, unless otherwise agreed to on the order. In no event shall payment be due prior to inspection and acceptance by Bobrick of the goods purchased under an order. Unless otherwise specified on an order, the price or prices specified on such order include all transportation and shipping charges and all applicable taxes, and such price or prices will not be changed as a result of failure by the seller to have included any applicable tax or transportation charge or as a result of any change in the seller's tax liabilities. All personal property taxes assessable upon the goods prior to receipt by Bobrick shall be borne by the seller. No charge shall be made by the seller for packaging unless provided for on the order.

6. Inspection. Bobrick shall have a reasonable time after receipt of the goods specified in an order to inspect them for conformity to the order. Where appropriate, Bobrick may run adequate tests to determine whether the goods conform to the specifications set forth in the order. Bobrick's use of a portion of the goods for the purpose of testing shall not constitute acceptance of such goods. Payment for the goods by Bobrick shall not prejudice Bobrick's right to return goods which are later found nonconforming or which fail inspection or affect Bobrick's right to receive credit or reimbursement for such goods from the seller.
7. Destruction of Goods. If the goods which are the subject of an order are destroyed prior to the time risk of loss passes to Bobrick, Bobrick may, at its option, cancel the order or require delivery of substitute goods of equal quantity and quality upon the terms set forth in the original order. In such event, delivery will be made by the seller as soon as commercially practicable thereafter. If the loss of goods is partial, Bobrick shall have the right to require delivery upon the terms set forth in the order of the portion of the goods not destroyed which conform to the order.
8. Warranties. Sales of the goods or services purchased under an order shall be subject to all express warranties made with respect thereto by the seller's agents and representatives orally and in writing and to all warranties with respect to goods provided by the California Commercial Code. Such warranties shall be in addition to any standard warranties and shall not be deemed to be exclusive. The seller shall furnish Bobrick with copies of the seller's standard product or work warranties and service guarantees applicable to goods and/or services covered by an order. All product or work warranties and service guarantees shall inure to the benefit of Bobrick, Bobrick's distributors, Bobrick's sales representatives and the end users of the goods and/or services.
9. No Security Interest. Bobrick shall not be obligated to give, and the seller may not reserve, any security interest in any goods covered by an order to secure any portion of the purchase price not paid at the time of delivery by Bobrick.
10. Remedies. In the event of breach of contract by the seller, Bobrick shall have all remedies provided by law, subject to the seller's right to collect the purchase price for goods accepted by Bobrick and with respect to which there has been no justified revocation of acceptance by Bobrick. The seller's sole remedy in the event of breach of contract by Bobrick shall be the right to recover damages in the amount equal to the contract price. No alternate method of measuring damages shall apply and the seller shall not be entitled to recover incidental damages as defined in the California Commercial Code. Furthermore, the seller shall have no right to resell goods for Bobrick's account in the event of wrongful rejection, revocation of acceptance, failure to make payments or repudiation by Bobrick and any resale of such goods shall be for the sole account of the seller.
11. Items Furnished by Bobrick. All designs, tools, patterns, drawings and other data as well as materials and equipment supplied by Bobrick to the seller shall remain the sole property of Bobrick. Tools supplied by Bobrick or purchased or fabricated by the seller for Bobrick shall be marked as the "Property of Bobrick", shall be properly maintained by the seller and shall be used by the seller only in connection with orders placed by Bobrick. Upon completion of an order, all tools and other items not incorporated in goods furnished by the seller shall be returned to Bobrick in good condition, unless Bobrick shall direct otherwise. The seller assumes all responsibility for the accuracy of tooling used in the production of goods ordered under an order, whether such tooling is fabricated by the seller or furnished by Bobrick. Unless otherwise agreed in writing, all special dies, tools, jigs, fixtures, equipment and patterns furnished by Bobrick to the seller, or specifically paid for by Bobrick, shall be the property of Bobrick, shall be subject to removal upon completion or cancellation of the order at Bobrick's request, shall be used only in filling orders from Bobrick and shall be held at the seller's risk and kept insured by the seller while in its custody or control in an amount equal to the replacement cost thereof with any loss in respect thereof to be paid to Bobrick.

12. Patent Protection. The seller agrees to indemnify, defend and hold harmless Bobrick, Bobrick's distributors, Bobrick's sales representatives and the end users of the goods from all liabilities, costs, losses and damages arising from claims by suit or otherwise of patent or trademark infringement resulting from such persons' use or sale of goods supplied by the seller under the order, unless the goods are made pursuant to Bobrick's drawings or designs. The seller also agrees that all designs, constructions, arrangements, disclosures and devices supplied by Bobrick under an order and all drawings, specifications and documents forming a part thereof by reference or otherwise are the property of Bobrick and are submitted in confidence upon the understanding and agreement by the seller that such designs, constructions, arrangements, disclosures and devices shall not be utilized in whole or in part by the seller either for the seller or on behalf of any other person without the written permission of Bobrick.
13. Shipping Instructions. Unless otherwise specified on an order, all goods shall be packaged by the seller in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. Bobrick's purchase order number as well as Bobrick's part number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.
14. Changes. As an offer, a Bobrick purchase order expressly limits acceptance to its terms and conditions, and notification of objection to any different or additional terms in any response to this offer from the seller is hereby given. Bobrick may, at any time and from time to time by amendment to an order issued to the seller, change: (a) the method of shipment or packing; (b) the drawings, designs or specifications; or (c) the place of delivery. If any such changes causes an increase or decrease in the cost of performance by the seller, or in the time required for performance by the seller, an equitable adjustment shall be made in the contract price and the delivery schedule and the order shall be amended in writing accordingly. Any such claims for adjustment must be asserted within 14 days from the date of the amendment of an order.
15. Labor Disputes. Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of an order, the seller shall immediately give notice thereof, including all relevant information with respect thereto, to Bobrick.
16. Waiver. No claim or right arising out of breach of contract by the seller 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 contained in a writing signed by Bobrick.
17. Termination. Unless otherwise agreed to in writing by Bobrick, Bobrick may terminate work under an order in whole or in part at any time by notice to the seller in writing. Upon receipt, the seller will immediately stop work on such order, or the terminated portion thereof, and notify its subcontractors to do likewise. Except for such termination as is caused by default or delay of the seller, the seller shall be entitled to reimbursement for its actual costs incurred up to and including the date of termination applicable to the termination and in acceptance with recognized accounting practices. The seller shall also be entitled to a reasonable profit on the work done prior to such termination at a rate not exceeding the rate used in establishing the original purchase price for the goods and/or services. The total of such claims shall not exceed the cancelled commitment value of the order. In the event that Bobrick breaches its obligations under an order, the seller's sole and exclusive remedy shall be reimbursement for the costs incurred by the seller at the time of Bobrick's breach. In the event of the institution of any proceedings against the seller in bankruptcy or insolvency or for the appointment of a receiver or trustee for the seller's assets, or in the event of an assignment for the benefit of the seller's creditors, Bobrick shall be entitled to cancel an order immediately upon giving notice of termination without liability, including liability for loss of anticipated profits.

18. Right to Cancel or Change. **Except as provided in sections 14 and 17, Bobrick shall have the right to cancel or unilaterally change an order at any time prior to actual receipt by Bobrick of the items that are the subject of such order without liability.**

19. Waiver of Jury Trial and Attorneys' Fees and Costs. In the event of a dispute between the seller and Bobrick as to an order, both parties agree to waive a right to trial by jury. The party prevailing in any litigation arising from a dispute between the seller and Bobrick as to an order shall be entitled to recover its reasonable attorneys' fees and costs.

20. Confidentiality. The seller shall not, without first obtaining Bobrick's written permission, in any manner advertise, publish or disclose the terms, details or specifications of an order placed by Bobrick, or the fact that it has furnished or has contracted to furnished Bobrick with the goods and/or services which are the subject of such order.

Effective: November 1, 2005

Revised: March 14, 2017