



A Pexco Company

Enflo Terms and Conditions of Sale

The following are the Terms and Conditions under which Enflo LLC, Inc. its designated representatives and its successors and assigns ("Enflo") sells its products in the United States of America and elsewhere.

- 1. Terms and Conditions.** These Terms and Conditions shall apply to purchase orders issued and accepted or other contractual commitments to buy and sell Enflo's products (collectively, "Orders"). Enflo hereby gives notice of its objection to any different or additional terms that may be included by the person, firm, corporation or other business entity that places an Order ("Buyer"). These Terms and Conditions will become a binding contract only when a written or electronic acceptance of an Order is sent to the Buyer by Enflo. If the Buyer has not otherwise accepted these Terms and Conditions, Buyer's acceptance of any products delivered by Enflo 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 which may appear on any form submitted by the Buyer. Any forms used by Buyer to acknowledge this order shall be for administrative purposes only and shall have no force or effect. No addition to or modification of the Terms and Conditions herein shall be binding on Enflo unless specifically agreed to by Enflo in writing.
 - 2. Inconsistent Terms.** In the event of any inconsistency or conflict among these Terms and Conditions, the inconsistency or conflict shall be resolved by giving the contract documents the following order of precedence: (1) the terms and conditions on the face hereof, (2) any terms and conditions expressly incorporated by reference on the face hereof, (3) the preprinted terms and conditions on the back hereof, and (4) any other terms and conditions that may be a part of the contract.
 - 3. Prices.** Enflo's prices for stock products are subject to change without prior notice. Prices payable under an Order for stock products shall be based on Enflo's published prices in effect at the time the Order was placed. Notwithstanding the foregoing sentence, however, for stock products to be delivered more than 30 days after an Order was placed, the applicable price shall be the higher of the price in effect at the time the Order was placed and the price in effect on the date Enflo delivers the product for shipment. Prices for custom products shall be stated in Enflo's quotation. Stenographic and clerical errors, if any, made by Enflo in any price quotation are subject to correction by Enflo. Prices are exclusive of all sales, use and like taxes. Any tax Enflo 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 Enflo or the taxing authority as required.
 - 4. Termination for Convenience.** Orders for products shall be terminable by Buyer on written notice received by Enflo prior to delivery by Enflo to the carrier for shipment. Upon termination of an Order by Buyer for stock products, Buyer shall be liable for a restocking charge of 25% of the price for each product terminated. Upon termination by Buyer of an Order for custom products (a) with respect to products manufactured prior to termination, Buyer shall be liable for the full price, and (b) with respect to products not fully manufactured, Buyer shall be liable for all direct and indirect costs and expenses incurred by Enflo in fulfilling the Order, including all materials purchased, commitments made and engineering design services performed.
 - 5. Deliveries and Delivery Quantities.** Enflo will make all reasonable efforts to adhere to the shipping or delivery dates requested by Buyer. Enflo 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, all products shall be delivered F.O.B. Enflo's manufacturing facility or a Enflo-owned distribution facility (whichever is applicable), and Buyer shall make all arrangements with an appropriate carrier to receive and transport the products to the destination specified by Buyer. Risk of loss for the products shall pass to Buyer upon delivery to the carrier. If Enflo agrees to arrange for a carrier, the cost of the carrier and insurance shall be added to the otherwise applicable price but risk of loss for the products will still pass to Buyer upon delivery to the carrier. Title shall pass upon Enflo's receipt of full payment by Buyer. Buyer shall accept overruns and under-runs on each individual item of custom product purchased hereunder, not exceeding 10% of the quantity of any product ordered. Where closer control of quantity is required by Buyer, special arrangements must be made in a writing signed by Buyer and Enflo. Any claims for shortages in the quantity of product delivered to Buyer must be made to Enflo, in writing, within 15 days from the date of delivery. Notwithstanding the foregoing, Enflo 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 13 below, Enflo reserves the right to apportion products among its customers in its sole discretion.
 - 6. Inspection.** Buyer acknowledges that Enflo inspects the products sold hereunder on a sampling basis only, and such inspections will be conducted in accordance with Enflo's standard practice of quality control. If 100% inspection is required by Buyer, arrangements must be made with Enflo before an Order is placed and reflected in a writing signed by both parties. 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.
 - 7. Packaging and Packing.** Standard packaging and packing methods selected by Enflo will be used unless otherwise agreed in a writing signed by both parties. Additional packaging and packing costs incurred at Buyer's request shall be payable by Buyer and added to the applicable invoice.
 - 8. Payment and Credit Terms.** Enflo's payment terms are net 30 days from the date of the invoice for Buyers who have an established credit record with Enflo, which shall be determined by Enflo in its sole discretion. Enflo reserves the right to refuse to deliver any product to Buyer except upon payment in cash in advance. In the event Buyer fails to make payments as required herein, Buyer shall pay interest at a rate of 1 and 1/2% per month on the unpaid balance, together with the costs of collection and attorneys' fees, all without relief from valuation and appraisal laws. Enflo shall have a security interest in all products delivered to Buyer under an Order until Enflo receives payment in full or 100% hereof.
 - 9. Warranties and Remedies.** Enflo 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. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, ENFLO 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 Enflo by Buyer, then Enflo, at Enflo's sole option, shall repair or replace such product (or non-conforming part) and make such repair or replacement product (or part) available for shipment to Buyer. Enflo's obligation to repair or replace is expressly conditioned on (a) Buyer obtaining written return authorization from Enflo prior to returning such non-conforming product and (b) Enflo's receipt of such non-conforming product within 30 days after delivery. Enflo's remedial obligations shall be excused if the product (or part) has been subjected to alteration, misuse, abuse or improper storage by Buyer. Unless Enflo 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.
- 10. Usage.** Enflo reserves the right to select sources of supply for raw materials, and Enflo does not guarantee the compatibility of performance of the materials in its products, or the products themselves, with any of Buyer's specific products or intended uses, whether or not such uses are known to Enflo, unless agreed to by Enflo in writing. Buyer is responsible for insuring compatibility between Enflo's 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 and save Enflo harmless from and against (a) any and all loss, damage, injury, claim, cause of action or proceeding arising out of the sale or use of Enflo'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 and in connection with any resale of Enflo'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 Enflo, including indemnity, at least equal to and including such items set forth herein, in order to maintain and provide to Enflo throughout the channels of distribution through and including the ultimate use and consumption of Enflo's product. Buyer shall insure that all information, labels and other warnings concerning Enflo's product provided to Buyer by Enflo, if any, are kept and delivered with Enflo's product throughout the channels of distribution. Without limiting Buyer's obligations as stated elsewhere herein, Buyer shall indemnify and hold Enflo harmless from and against any and all loss, damage, injury, claim, cause of action or proceeding that may result from Buyer's failure to adhere to the covenants contained in this paragraph, and from and against any and all costs and expenses, including attorneys' fees, related thereto.
 - 11. Custom Products.** The following provisions apply to all sales of custom products sold under an Order. In the event Enflo fabricates, casts or manufactures any forms, patterns, molds, dies, tooling or punches (collectively called "Forms") or performs any engineering design services ("Design Services") necessary for the manufacture of custom products sold under an Order, Buyer shall reimburse Enflo for the full cost of making such Forms and performing such Design Services and such Forms shall remain the exclusive property of Enflo. In the event Enflo is required to redesign, repair or replace any Forms or re-perform such Design Services, Buyer shall reimburse Enflo for all such costs. Buyer acknowledges that such Forms will be based on technical information and drawings provided by Buyer to Enflo, and Buyer agrees not to assert any claim against Enflo with respect to any such technical information or drawings Buyer may have disclosed to Enflo. Enflo 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 Form, Buyer shall be solely responsible for the proper form, fit and function of the products manufactured using the Form. Enflo shall have no liability to Buyer for, and without limiting Buyer's obligations as stated elsewhere herein, Buyer shall indemnify and hold Enflo harmless from, any claims, including but not limited to claims of third parties, arising out of or relating in any way to the Forms or the products manufactured using such Forms, whether based on patent, trademark, copyright, defective design, 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 Enflo or its employees. In the event Buyer provides Forms to Enflo, Enflo shall have no liability to Buyer for any loss or damage to such Forms during transportation from Buyer to Enflo or during Enflo's possession and control of such Forms, unless such loss or damage is due solely to the gross negligence or intentional misconduct of Enflo or its employees.
 - 12. Limitation of Liability.** IN NO EVENT SHALL ENFLO 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 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 ENFLO'S AGGREGATE LIABILITY TO BUYER WITH RESPECT TO ANY PRODUCT DELIVERED PURSUANT TO ANY ORDER EXCEED THE AGGREGATE COMPENSATION PAYABLE TO ENFLO 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 18 months after the cause of action has accrued, except that an action for nonpayment may be brought by Enflo at any time within 36 months from the date payment becomes 90 days past due.
- 13. Patents/Indemnity.** Without limiting Buyer's obligations as stated elsewhere herein, Buyer shall indemnify and save Enflo harmless from and against (a) any claim, 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 thereunder. Buyer shall promptly pay or secure any judgment or recovery and pay Enflo's reasonable costs and expenses, including attorneys' fees, in defending any such claim, action or proceeding. Any patentable invention created by Enflo in performing any work for Buyer under this order or any modification hereof, will be Enflo's sole and exclusive property unless otherwise stated on the face hereof.
 - 14. Force Majeure.** Neither Buyer nor Enflo 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 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 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 Enflo's plant, the product and/or raw materials in whole or in part by a federal or state 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.
 - 15. Cancellation.** Any Order may be cancelled by Enflo 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 such breach shall not be cured, or such repudiation is not retracted, within five days after Enflo provides written notice thereof to Buyer.
 - 16. General Provisions.** These Terms and Conditions and any sale hereunder shall be governed by the laws of the State of Delaware, U.S.A., notwithstanding any choice of law provision that might apply the laws of another jurisdiction. Any claim or dispute arising out of an Order or the products delivered under any Order may only be brought in the state and federal courts located in the State of Delaware. Buyer may not assign any Order or any interest therein without the prior written consent of Enflo. Any actual or attempted assignment without such consent shall be void and shall entitle Enflo to cancel the Order. 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. All rights and remedies whether conferred hereby or by any other instrument of law shall be cumulative, and may be exercised singularly or concurrently. Failure by Enflo 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 upon Enflo unless in writing and signed by Enflo, and any such waiver shall be limited to the particular instance referred to. In the event 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 shall continue in full force and effect. Notwithstanding the above, such invalid term or condition shall be construed, to the extent possible, in accordance with the original intent of the parties. Each Order and these Terms and Conditions constitute the entire agreement between Enflo and Buyer with respect to the Order and supersede all proposals, oral and written, all previous negotiations and all other communications between the parties.