

**Smyth Companies, LLC invoices incorporate the following Terms and Conditions of Sale by reference and these Terms and Conditions of Sale and the invoice together constitute a binding agreement between the parties.**

**SMYTH COMPANIES, LLC  
TERMS AND CONDITIONS OF SALE**

1. **ACCEPTANCE.** Seller accepts customer's order on the condition that customer agrees to accept the terms and conditions of sale set forth herein and on the further conditions contained in any order form, confirmation order or other writing to customer, whether previously or hereafter delivered, which either add to, differ from, modify, conflict with or are otherwise inconsistent with any term or condition herein. CUSTOMER'S FAILURE TO OBJECT IN WRITING TO THE TERMS AND CONDITIONS HEREIN PRIOR TO THE EARLIER OF THE CUSTOMER'S ACCEPTANCE OF THE PRODUCTS ORDERED OR FIFTEEN (15) DAYS AFTER DELIVERY HEREOF TO CUSTOMER WILL CONSTITUTE AGREEMENT BY CUSTOMER TO THESE TERMS AND CONDITIONS OF SALE. Any reference herein to customer's order, confirmation or other writing is for purposes of identification only and shall not affect the terms and conditions hereof.
2. **QUOTATION.** A quotation not accepted within thirty (30) days is subject to review. Estimates are based upon prevailing wages, the anticipated hours of work and cost of materials and supplies necessary to produce work in accordance with preliminary copy, style and specifications. The quoted price is exclusive of: a) freight charges unless specifications state otherwise and; b) any sales, excise or other taxes of any nature whatsoever imposed by any government authority.
3. **ORDERS.** Orders regularly placed, verbal or written, cannot be canceled except upon terms that will compensate Seller against all costs, expenses and losses incurred by Seller in reliance of the order. Order cancellations must be in writing.
4. **EXPERIMENTAL WORK.** Experimental or preliminary work performed at the customer's request will be charged at current rates.
5. **CREATIVE WORK.** Creative work, such as sketches, copy, dummies, and all preparatory work developed and furnished by Seller, shall remain its exclusive property and no use of same shall be made, nor any ideas obtained therefrom be used, except upon compensation to be determined by Seller.
6. **ACCURACY OF SPECIFICATIONS.** Quotations are based on the accuracy of the specifications provided. Seller can re-quote a job at time of submission if copy, film, tapes, disks, or other input materials don't conform to the information on which the original quotation was based.
7. **PREPARATORY MATERIALS.** Working mechanical art, type, negatives, positives, separations, flats, plate films, tapes, disks, plates, dies and other items when supplied by Seller, shall remain Seller's exclusive property unless otherwise agreed in writing.
8. **ELECTRONIC MANUSCRIPT OR IMAGE.** It is the customer's responsibility to maintain a copy of the original file. Seller is not responsible for accidental damage to media supplied by the customer or for the accuracy of furnished input or final output. Until digital input can be evaluated by Seller, no claims or promises are made about Seller's ability to work with jobs submitted in digital format, and no liability is assumed for problems that may arise. Any additional translating, editing, or programming needed to utilize customer-supplied files will be charged at prevailing rates.
9. **ALTERATIONS.** Alterations represent work performed in addition to the original specification. Such additional work shall be charged at current rates and be supported with documentation upon request.
10. **PRE-PRESS PROOFS.** Customer shall return to Seller proof(s) indicating acceptance or any and all changes. If revised proofs are desired, request must be made when proofs are returned. Seller is not responsible for errors or subsequent correction costs for work completed in accordance with customer's approval or for errors due to customer's failure to order proofs, refusal to accept proofs, failure to return proofs marked with changes, or customer's instructions to proceed without submission of proofs.
11. **PRESS PROOFS.** Unless specifically provided in Seller's quotation, press proofs will be charged at current rates. A press sheet can be made available for customer approval, at no charge, provided customer is available at the press during the time of make-ready. Lost press time due to customer delay, fault or customer changes and corrections, will be charged at current rates.
12. **COLOR PROOFING.** Because of differences in equipment, processing, proofing substrates, paper, inks, pigments, and other conditions between color proofing and production pressroom operations, variation in color between color proofs and the completed job shall constitute acceptable delivery.
13. **OVER-RUNS AND UNDER-RUNS.** Over-runs and under-runs not to exceed 10% on quantities ordered, or any other percentage that Seller agrees to in writing, shall constitute acceptable delivery. Seller will bill for actual quantity delivered within this tolerance.

If customer requires guaranteed minimum quantities, the percentage of overrun tolerance must be doubled or additional costs may be changed.

14. **CUSTOMER'S PROPERTY.** Seller will maintain fire, extended coverage, vandalism, malicious and sprinkler leakage insurance on all property belonging to the customer while such property is in Seller's possession. Seller's liability for such property shall not exceed the amount recoverable from such insurance.
15. **DELIVERY.** Unless otherwise specified, the price quoted is for a single shipment, without storage, F.O.B. Seller's plant. Proposals are based on continuous and uninterrupted delivery of complete order, unless specifications distinctly state otherwise. Charges related to delivery from customer to Seller, or from customer's supplier to Seller, are not included in any quotations unless specified. Special priority pickup (including air freight) or delivery service will be provided at current rates upon customer's request. Title for finished work shall pass to the customer upon delivery to carrier at shipping point or upon mailing of invoices for finished work, whichever occurs first.
16. **PRODUCTION SCHEDULES.** Production schedules will be established and adhered to by customer and Seller, provided that neither shall incur any liability or penalty for delays due to state of war, riot, weather, civil disorder, fire, labor trouble, strikes, accidents, energy failure, equipment breakdown, delays of suppliers or carriers, unavailability of required materials, action of government or civil authority, delays in receipt by Seller of materials to be supplied by customer and acts of God or other causes beyond the control of customer or Seller. Where production schedules are not adhered to by the customer, final delivery date(s) will be subject to change.
17. **CUSTOMER-FURNISHED MATERIALS.** Artwork, camera copy, film, color separations, paper stock, inks, tapes, computer disks, and other customer-furnished material shall be manufactured, packaged, and delivered to Seller's specifications. Additional cost due to delays or impaired production caused by specification deficiencies shall be charged to the customer. Any materials furnished by customers shall remain the property of the customer.
18. **TERMS.** Payment is due in U.S. funds thirty (30) days from the invoice date unless otherwise agreed to in writing by Seller and customer. All payments not tendered when due shall bear interest at the rate of 1-1/2% per month (or the maximum rate permitted by law) until paid. All payments shall be applied first to the reduction of any and all accrued and unpaid interest and the balance to the reduction of principal until payment, in full, shall be made pursuant to this agreement. Seller may refuse to deliver any goods so long as it, in its sole and exclusive discretion, has reasonable grounds for insecurity concerning customer's financial condition or customer's ability or willingness to perform its obligations hereunder. As security for payment of any sum due or to become due under terms of any agreement, Seller shall have the right, if necessary, to retain possession of, and shall have a lien on, all customer property in Seller's possession including work in process and finished work. The extension of credit or the acceptance of notes, trade acceptance, or guarantee of payment shall not affect such security interest and lien. Customer hereby acknowledges and agrees that it shall pay any and all costs and expenses relating to the collection of all payments due hereunder, if any, and there shall be allowed and included as additional indebtedness in any judgment relating to the collection of payments due hereunder, all expenditures and expenses which may be paid or incurred by Seller, including but not limited to, actual attorneys' fees and court costs.
19. **WARRANTY, LIMITATION OF LIABILITY AND CLAIMS.** SELLER WARRANTS THAT THE GOODS AND SERVICES SOLD HEREUNDER WILL CONFORM TO THE DESCRIPTION ON THE FACE HEREOF, WILL BE FREE OF DEFECTS IN MATERIAL AND WORKMANSHIP, AND WILL BE OF SELLER'S STANDARD QUALITY. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller's liability under this warranty shall be limited to its option either: (1) to repair or replace the goods or services ordered; or (2) to return the purchase price paid by the customer. In no event shall Seller be liable for incidental, special or consequential damages, including profits (or profits lost). CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR ALL LOSS, DAMAGE OR INJURY TO PERSON OR PROPERTY RESULTING FROM THE USE OF SAID GOODS IN MANUFACTURING PROCESSES OR IN COMBINATION WITH OTHER SUBSTANCES OR OTHERWISE. Claims for defects, damages, or shortages must be made by the customer in writing within a period of fifteen (15) days after delivery of all or any part of the order. Failure to make such claim within the stated period shall constitute irrevocable acceptance and an admission that they fully comply with terms, conditions, and specifications. Seller's limited warranty with regards to Universal Product Codes (UPC's) are contained in Section 22.
20. **INDEMNIFICATIONS.** The customer shall indemnify and hold harmless Seller from any and all loss, cost, expense, and damages (including court costs and reasonable attorneys fees) on account of any and all manner of claims, demands, actions, and proceedings that may be instituted against Seller on grounds alleging that the said printing violates any copyrights or any proprietary right of any person, or that it contains any matter that is libelous or obscene or scandalous, or invades any person's right to privacy or other personal rights, except to the extent that Seller contributed to the matter. The customer agrees, at the customer's own expense, to promptly defend and continue the defense of any such claim, demand, action, or proceeding that may be brought against the printer, provided that Seller shall promptly notify the customer with respect thereto, and provided further that Seller shall give the customer such reasonable time as the exigencies of the situation may permit in which to undertake and continue the defense thereof.

21. **CHANGES IN LABOR RATES AND MATERIALS PURCHASED.** The prices contained herein are based on the cost of labor and materials as of the date hereof and the customer hereby understands and agrees that said prices are subject to adjustment to reflect any increase in such cost subsequent to this date. Should there be any increases in these costs after the order is accepted and before completion of work, the increased material and labor costs will be charged.

22. **UNIVERSAL PRODUCT CODE PRINTING POLICIES AND LIMITED WARRANTY.** In printing labels containing Universal Product Code ("UPC") symbols, Seller utilizes pre-press and on-press procedures believed to be in full compliance with ANSI Standard Level "C", and to provide an extremely high probability of printing symbols free from error.

While these procedures are believed to provide Seller's customers with a high degree of confidence in the accuracy and scanability of UPC symbols printed by Seller, there can be no assurance that UPC symbols printed by Seller will be error-free. Accordingly, Seller expects its customers to conduct random sample audits of each print job containing UPC symbols to confirm compliance with customer specifications and UPC scanability standards before applying them to packaging.

Seller provides a limited warranty for labels containing UPC symbols sized at 90% or larger and not truncated more than as provided in guidelines promulgated by the Universal Code Council. Under this warranty, UPC symbols printed by Seller are warranted to comply with ANSI Standard Level "C", and Seller will reprint, at no additional cost to the customer, any labels containing UPC symbols not meeting such standard.

**Except as set forth above, Seller hereby disclaims any and all warranties, express or implied, including the warranties of merchantability and fitness for a particular purpose, with regard to labels containing UPC symbols. Seller's sole and exclusive liability for defective UPC symbol printing will be limited to reprinting defective labels, as provided above, and in no event will Seller be liable for any indirect, consequential or other damages, including, but not limited to, lost profits, penalties or loss of business, even if advised of the possibility of such damages. As stated above, no warranty is provided, and Seller disclaims any and all liability in connection with, labels containing UPC symbols sized at less than 90% or truncated more than as provided in Universal Code Council Guidelines.**

23. **STORAGE.** Seller may charge the Customer a storage charge for any goods held at the Customer's request after the manufacturing of such goods is completed. Any goods held in storage by Seller over one year after the manufacture of such goods is completed may be sold, scrapped or destroyed by Seller without relieving customer of the obligation to pay for the goods and the storage and destruction and disposal therefore. However, Seller will give customer 30 days notice of the intent to dispose of the goods.

24. **PLACE OF SALE.** This agreement is made and entered into the State of Minnesota for goods, materials and services to be provided and sold by Seller and purchased by Customer in the State of Minnesota. At Seller's option, litigation of any dispute arising hereunder may be commenced in the state of Minnesota. In that event, Customer hereby consents to the jurisdiction of the Courts of the State of Minnesota.