

COBALT CHAINS, INC. STANDARD TERMS AND CONDITIONS – SCHEDULE (A)

GENERAL

In placing an order with Cobalt Chains, Inc. (hereafter referred to as “Company”), the Buyer shall be deemed to have accepted these Terms and Conditions unconditionally, which cannot be varied except by agreement in writing between the parties. Buyer has read and understands these Standard Terms and Conditions. Buyer’s acceptance limits terms of contract to the Company’s Terms and Conditions, and Buyer’s standard conditions of purchase shall not apply and are hereby rejected unless specifically accepted in advance in writing.

- 1) Orders  
All orders are subject to acceptance by the Company and once accepted cannot be cancelled by the Buyer, except by agreement of the parties in writing.
- 2) Prices  
All prices shall be those ruling at the time of the despatch of goods.
- 3) Freight  
Orders are on an Ex-works basis with freight costs and packaging extra, unless otherwise specified at quotation stage.
- 4) Terms of Payment
  - (i) Payment for all goods delivered shall be made in full without any deductions (unless previously accepted in writing by the Company) 30 days from invoice date, unless alternative terms are agreed and confirmed in writing by the Company. Buyer agrees that it shall not include any notation or statement of accord and satisfaction on any payment and any attempt to do so is hereby agreed to be invalid and unenforceable.
  - (ii) Where delivery is not part of the Contract and the Buyer has been informed that the goods are ready for collection and collection is not made within three weeks, a storage charge may be made.
- 5) Performance Contract  
The Company makes no guarantees based on estimates. Every effort will be made to carry out any contract in accordance with the Company’s estimate or specification, but the due performance of any contract is subject to a variation or cancellation due to strikes, official or unofficial lockouts, government restrictions, fire flood or any other causes beyond the Company’s control. The company shall not be liable for any loss arising from such variation or cancellation. If the necessary materials are not available the Company may at its discretion give notice of such non-availability and rescind or revise the Contract as to the whole or any specified part. Where no specification on the materials to be used has been defined, the material to be used shall be at the Company’s sole discretion. Design or catalogue specifications may be changed by the Company at any time without notice.
- 6) Taxes  
All taxes are excluded from the agreed Purchase Price. Any city, state, and federal sales, use, excise, or similar taxes which the Company may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the goods conveyed hereby, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to the Company upon demand. Where taxes do not apply upon sale or resale, Buyer shall provide the Company with tax exemption certificates acceptable to the appropriate taxing authorities.
- 7) Cancellation by the Company  
Without prejudice to any other rights it may have the Company reserves the right to cancel any uncompleted order or to suspend delivery of any goods the subject thereof in the event of the Buyer failing to make due payment of any monies due to the Company under that or any other order (within the payment terms specified in 4i) of these conditions.
- 8) Cancellation by Buyer  
In the event of cancellation by the Buyer of any order for products specially manufactured by the Company to individual specifications and not marketed by the Company as standard lines, the Company shall be entitled to charge a minimum cancellation fee of 20% of the purchase price as well as for all lost profit and expenses incurred in the preparation and manufacturing process and resale of such products. Company shall attempt to mitigate damages, but Buyer agrees the Company has no legal requirement to do so.
- 9) Returns  
When goods are tendered by the Company and returned due to causes outside its control the Company may refuse to accept the return of such goods, or if it does so accept them, it shall be entitled to make an additional charge in respect of the cost of transport and double handling necessitated by such return.
- 10) Installment orders  
Whereby agreement between the Company and the Buyer, delivery of goods is to be made by installments, each installment delivered will be invoiced to the Buyer as if the subject of a separate order and the Buyer shall make payment therefore within the period specified by paragraph 4 of these conditions. Failure by the Company to deliver any one or more such installments shall not entitle the Buyer to refuse to accept delivery of any other installment nor shall the Buyer’s liability to the Company with regard to those other installments be in any way affected. Once the Buyer accepts an installment, the Buyer waives any claims regarding the product on any subsequent installment based on the same specifications and design.
- 11) Back charges  
Any and all back charges or any claim not specifically covered by the Company’s warranty agreement are expressly waived by Buyer against the Company.
- 12) Damage of Goods

The Company shall not be liable to the Buyer in respect of any goods which may be delivered in a damaged condition unless the Buyer endorses the delivery note to the effect that the goods were so damaged or accepted without examination and thereafter within three days of delivery gives full details in writing to the Company of all such damage or (in case of total loss) the covering documentation. Damaged goods should be retained pending the Company’s inspection and disposal instructions.

- 13) Limited Liability  
The Company will at its own discretion repair, replace (as originally ordered) or refund the price of any goods which may be supplied to the Buyer in a defective condition if in the opinion of the Company such goods are defective solely by reason of faulty materials or workmanship, provided that the Buyer within 14 days of delivery of the goods alleged to be defective, gives notice in writing to the Company of the alleged defect.
- 14) Indemnity  
Unless expressly provided in these conditions, the Company will not be liable for any loss, expenditure or damage, consequential or otherwise, suffered or incurred by the Buyer or by third parties whether arising directly or indirectly from any defect in quality or workmanship, and the Buyer shall indemnify the Company against any liability arising from claims made by any third party, after the goods have been accepted by the Buyer.
- 15) Delivery Dates  
Delivery estimates are not guarantees. Company cannot guarantee delivery date. Whilst every effort is made to ensure that goods are delivered on the due date, the Company shall not be liable for any delays in delivery which may occur. Non-delivery or quality rejection claims cannot be entertained unless Company is informed within 14 days of the date of invoice. If the Company submits a sample for the Buyer’s approval, the period specified for delivery on the Company’s quotation shall commence on the date when the Company receives such approval in writing. The Company may at any time give notice of revised delivery dates, and unless the Buyer cancels the Contract within seven days of receiving notice of such revised dates, the Buyer shall accept the same.
- 16) Quantities  
The Company will make every effort to produce goods in the precise quantity ordered by the Buyer but the Buyer acknowledges and agrees to accept and to make payment for deliveries where the variation does not exceed 10% of the quantity ordered. Prices quoted by the Company in all estimates, specifications, acceptances of orders, or Contracts are based upon the full quantities therein and the Company shall be entitled to revise prices if the Buyer fails to take delivery of the quantity on which the estimate was based.
- 17) Property in Goods Sold and Unpaid Sellers Rights
  - (a) So long as any payment from the Buyer to the Company is outstanding (whether or not the time for payment has yet become due) the title in the goods, until re-sale, shall not pass to the Buyer.
  - (b) If the goods should become constituents of or be converted into other products before the title passes from the Company, such other products shall pass into the ownership of the Company, and the Company shall have the same rights and remedies over such other products as over the goods in their unconverted state.
  - (c) If the goods are re-sold by the Buyer while any payment remains outstanding to the Company, (whether or not the time for payment has yet become due) the Buyer shall be deemed to sell as Agent of the Company, who shall be entitled to payment from the Buyer’s purchaser to the extent of the Buyer’s Indebtedness.
  - (d) Notwithstanding the foregoing provisions the risk in the goods shall pass to the Buyer immediately once the goods leave the Company’s premises, notwithstanding the fact that delivery may be undertaken by the Company at the Buyer’s request.
- 18) Patent Infringement Indemnity  
The Buyer will indemnify the Company for all costs (including but not limited to legal fees and damages) against any claim for infringement of patents or registered designs or trademarks as a result of the Company carrying out the Buyer’s instructions.
- 19) Drawings and Design Specifications
  - (a) The Company accepts no responsibility for the accuracy of drawings and/or design specifications supplied by the Buyer, nor for any claim which may arise as a result of using such drawings or specifications.
  - (b) All drawings and design specifications and other information supplied by the Company is supplied on the express understanding that the Buyer will not:
    - (i) Give away, loan, exhibit, sell or otherwise divulge any such information or copies thereof; or
    - (ii) Use the information in any way except in conjunction with the goods for which they are issued.
- 20) Entire Agreement/Modifications  
These Terms and Conditions constitute the complete and final agreement between the Company and Buyer with respect to the subject matter hereof and supersede all prior oral or written agreements and may not be modified or amended except in writing by the Company.
- 21) Enforceability  
If Buyer fails to perform in any way under or with respect to these Terms and Conditions, the Company expressly reserves any and all rights and remedies permitted by law or in equity and may recover all reasonable attorney fees, court fees, or any other cost incurred to enforce Buyer’s obligations and or with respect to the Terms and Conditions. All rights and remedies of the Company are cumulative.
- 22) Authority  
Buyer warrants that the person providing the purchase order or agreement is duly authorized to do so and establishes acceptance of these Terms and Conditions.

23) Buyer's Acknowledgement

In placing an order with the Company, the Buyer shall be deemed to have accepted these terms and conditions unconditionally.

24) Legal Proceedings

Any action or suit shall be construed in accordance with Illinois law and have a situs in Tazewell County, Illinois, which shall have jurisdiction in any dispute in connection therewith.

25) ARBITRATION

At the exclusive discretion of the Company, the Company can opt to resolve through adversarial dispute resolution any disputes arising out of this agreement, Buyer agrees that any disputes may be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration. Judgment on the award rendered in any such arbitration is binding and may be entered in any court having jurisdiction. The arbitration will be conducted in the English Language in or within 50 miles of East Peoria, Illinois in accordance with the United States Arbitration Act. There shall be three arbitrators, named in accordance with such rules. The award of the arbitrators shall be accompanied by a statement of the reasons upon which the award is based. The arbitrators shall decide the dispute in accordance with the substantive law of the state of Illinois.

26) Quotations/Estimates

Under no circumstances are quotations/estimates provided by the Company valid for a period of more than 30 days from the date of said quotation/estimate.