



**VTS AMERICA INC.
TERMS AND CONDITIONS OF SALES**

**§1
General**

- 1.1 These General Terms and Conditions of Sale and Delivery ("Terms and Conditions") supersede all printed terms and conditions on any purchase order or other form ("Form"), if any, of a Distributor that has presented a Form ("Distributor") and any other inconsistent terms submitted by Distributor prior to acceptance by VTS America Inc. ("VTS") of a purchase order ("Order"). These Terms and Conditions, together with VTS's Limited Warranty and the Distribution Agreement between VTS and Distributor, shall govern exclusively any transaction by and between VTS and the Distributor ("Transaction") unless otherwise agreed upon by VTS in writing.
- 1.2 Distributor acknowledges that VTS hereby expressly rejects any and all conflicting or different terms and conditions by Distributor unless VTS expressly agrees in writing that Distributor's terms and conditions shall govern a particular Transaction. No distributor, sales representative or other independent representative of VTS shall have authority to vary these Terms and Conditions in any respect or to agree to any additional terms or conditions.
- 1.3 These Terms and Conditions shall also exclusively govern a Transaction in the event that Distributor submits conflicting or different terms and conditions and VTS accepts an order or proceeds with the shipment of VTS products ("Products") or otherwise proceeds with the Transaction without expressly rejecting Distributor's terms and conditions.
- 1.4 Distributor's receipt of Products shall be conclusive evidence that Distributor has acknowledged and agreed that these Terms and Conditions shall govern the Transaction under which such Products were shipped.

**§2
Acceptance**

Orders are binding only after written acceptance by VTS ("Acceptance"). Distributor acknowledges that VTS reserves the right to reject any Order for any reason or for no reason.

**§3
Shipment; Risk of Loss; Shipping Schedule**

- 3.1 The Products are packaged carefully, using standard approved methods. The shipment shall be deemed accepted in good and undamaged condition by the common carrier ("Carrier").
- 3.2 VTS will use its commercially reasonable efforts to ship the Products as agreed upon by VTS and Distributor. However, Distributor acknowledges and agrees that lead time will vary according to availability of supply, delays in transportation, manufacturing problems and other conditions, and, consequently all delivery dates communicated by VTS are estimates and shall be subject to change without notice. Delay in delivery of any shipment of Products shall not relieve Distributor of its obligations to accept such shipment or any other shipment. Under no circumstances shall VTS on account of late delivery or non-delivery be liable to Distributor, its agents or any other persons for any special or consequential damages, including those based upon lost goodwill, lost profits, work stoppage, impairment of or breach of contract, negligence or such other actions as may be deemed or alleged to be the cause of a loss or damage to such a person.



- 3.3 VTS shall invoice all freight, handling and insurance charges to Distributor. Shipments will be insured by VTS upon Distributor's request.
- 3.4 For collect shipments via a rush carrier, VTS shall bill all freight charges to the collect account number provided by Distributor. All collect shipments are NOT insured. Distributor must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Distributor. VTS assumes no responsibility for any such loss or damage.
- 3.5 For truck shipments, VTS shall bill all freight charges to the account number provided. All truck shipments are NOT insured. Distributor must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Distributor. VTS assumes no responsibility for any such loss or damage.
- 3.6 All shipments shall be made by a Carrier of VTS's choice and under consideration of Distributor's preferred Carrier. Any special arrangements requested by Distributor shall be at Distributor's additional expense.
- 3.7 VTS reserves the right to deliver in installments. All such installments shall be separately invoiced and paid when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Distributor of its obligation to accept remaining deliveries.
- 3.8 If Distributor defaults in accepting delivery of Products, VTS shall be entitled to charge storage and restocking fees. Such charges shall be per week five percent (5%) of the value of that delivery or any such portion of it which was not accepted as agreed upon. Outgoing and ingoing freight expenses shall be borne by Distributor for any such delivery. Upon Distributor's default under this Section 3.8, VTS shall be entitled to otherwise sell any such Products and, upon Distributor's request for delivery, to deliver a new batch of Products to Distributor at reasonably extended delivery periods so as to afford VTS with the opportunity to obtain, manufacture or provide for delivery of such Products in the ordinary course of its business.

§4

Inspection; Claims; Return

- 4.1 Distributor shall inspect any shipment of Products immediately upon delivery with respect to quantity, quality and defects. If Distributor discovers any quantity or quality deviation or any defect, Distributor shall notify VTS of such deviation or defect and shall also supply invoice number and date of invoice. Such notice shall be given to VTS in accordance with Section 12 below within twenty-four (24) hours of Distributor's receipt of the Products. Distributor shall not refuse acceptance of shipment because of transit damage as this causes unnecessary shipping expense and delay. If damage or loss is ascertainable by Distributor upon delivery, Distributor must file a claim with the Carrier and notify VTS in writing as set forth above within two (2) business days after delivery. Notations regarding such claim shall be made on all copies of Carrier's waybill and the driver must sign all copies to acknowledge notification of the claim. For any defects which are not immediately apparent, Distributor shall notify VTS within two (2) business days of discovery of a defect. Upon VTS's request, Distributor shall furnish to VTS all original delivery records so as to assist VTS in assessing the validity of the claim.
- 4.2 Distributor shall not return any Products without prior written approval of VTS.
- 4.3 VTS shall apply a twenty-five percent (25%) restocking fee for all returns not due to defect in workmanship or materials.



§5 Intellectual Property

- 5.1 Distributor acknowledges VTS's exclusive right, title and interest in VTS's patents, trademarks, service marks, trade names, emblem, designs and methods relating to Products (the "Intellectual Property"). Distributor acknowledges that VTS has certain ideas and information concerning financial matters and trade secrets and corporate proprietary information, written and unwritten (the "Information and Ideas") which VTS is willing to disclose to Distributor from time to time as it becomes necessary to promote a Transaction. Distributor shall not acquire any right, title or interest in the Intellectual Property or the Information and Ideas by virtue of any Transaction under these Terms and Conditions, or at any time describe or represent itself to others as having such right, title or interest. Should any law or regulation vest Distributor with any rights and any of the Intellectual Property or the Information and Ideas, Distributor hereby assigns and agrees to assign to VTS all such rights contemporaneously with their vesting. Distributor shall timely notify VTS of any and all infringements of the Intellectual Property or the Information and Ideas of which it becomes aware and will assist VTS in taking action against any such infringements.
- 5.2 Distributor acknowledges and agrees that irreparable harm would be suffered by VTS in the event of a breach of this Section 5 and that VTS shall have the right to seek injunctive relief in the event of a breach or threatened breach of this Section. Distributor agrees that the rights of VTS provided in the sentence above and under the terms of these Terms and Conditions shall be in addition to, and not in lieu of, all other rights VTS may have at law or in equity to protect the Intellectual Property and the Information and Ideas.

§6 Indemnification

Distributor hereby agrees to indemnify, defend, at its expense, and hold VTS harmless from and against all loss, costs, damages or expenses arising out of any of Distributor's breach of any term of an Order or Acceptance governed by these Terms and Conditions or any provision thereof, including but not limited to alleged infringements of patents, trademarks, copyrights or any other intellectual property right relating to the use of Products. VTS's right to indemnification shall include (by way of inclusion, but not limitation) any loss, costs, damages or expenses arising from Distributor's unauthorized modifications or alterations of the Products.

§7 Default

VTS reserves the right to cancel all or any part of a current Order and any other Orders outstanding, without liability to Distributor, if Distributor fails to perform under any applicable provision of these Terms and Conditions or of any applicable Order or Acceptance and the failure is not cured within ten (10) days after notice to Distributor by VTS.



§8 Arbitration

Except as otherwise provided in Section 9 below, in the event that the parties are unable to agree on any matter for which agreement is required under these Terms and Conditions, or if either party commits a breach or default hereunder, whether material or immaterial, either party shall have the right to submit the matter to binding arbitration in accordance with the rules of the American Arbitration Association (“AAA”), as then in effect. Each party shall pay one-half of the deposit required by AAA. The matter shall be considered by a single arbitrator. The parties shall request, within fifteen (15) days of receipt of notice of one party to the other party requesting arbitration, from AAA a list of approved arbitrators and, by way of elimination, shall agree the arbitrator. If the parties cannot agree on the arbitrator, then the AAA shall select the arbitrator. The non-prevailing party shall bear the costs of the arbitrator, witness fees, attorneys’ fees and all other costs associated with the arbitration proceeding. The arbitration proceeding shall occur in Gwinnett County, Georgia and the discovery proceedings shall be limited to the deposition of one (1) C-level and one (1) management-level employee of, and one (1) expert witness for each party. The Federal Arbitration Act shall be applicable to the arbitration proceedings. The arbitrator(s) shall apply the law of the State of Georgia.

§9 Jurisdiction; Venue

For purposes of relief as provided in Section 5 above or should arbitration not be available, in any legal action relating to the sale and shipment of Products under these Terms and Conditions, Distributor irrevocably agrees and consents (i) to the exercise of jurisdiction over it by the courts of the State of Georgia or the United States District Court for the Northern District of Georgia; and (ii) that if Distributor brings the action, it shall be instituted in one of the courts specified in Subsection (i) above. Service of process provided to Distributor in accordance with Section 12 below shall be effective and sufficient to establish jurisdiction and venue in such court in any such action. Should arbitration not be available, VTS may institute legal action in any appropriate jurisdiction.

§10 Governing Law

These Terms and Conditions and any transaction between VTS and Distributor under these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Georgia, United States of America.

§11 Severability

If any phrase, clause, sentence, or other provision contained in these Terms and Conditions violates any applicable statute, ordinance, rule or law, such phrase, clause, sentence or provision shall be ineffective to the extent of such violations without invalidating any other provision of this Agreement.



§12 Notice

Any notice or other communication required or permitted by these Terms and Conditions to VTS must be given in writing and must be delivered by personal delivery (including personal delivery by overnight courier such as Federal Express, DHL, or similar overnight courier), first class mail (registered or certified), telecopy or e-mail (with a copy sent by personal delivery or first class mail), in each case addressed to VTS America Inc., 1650 Horizon Parkway NE, Suite 100, Buford, GA 30518, Telephone: 1-470-809-6811, Fax: 1-470-809-6815, Email: america@vtsgroup.com. Notice shall be effective upon receipt.

§13 Assignment

Distributor shall not be entitled to delegate any duties or assign any rights under these Terms and Conditions without the prior written consent of VTS, which shall not be unreasonably withheld; provided, however, Distributor shall not be permitted to assign this Agreement to any competitor of Supplier, as determined in the reasonable discretion of Supplier. For the purposes of this Agreement, the following actions, whether accomplished through a single transaction or a series of transactions, shall be deemed to effect an assignment of this Agreement: (i) a merger, consolidation, reorganization, sale of stock or like transaction in which greater than 50% of the ownership of Distributor is transferred or (ii) the sale of all or substantially all of the assets of Distributor. Any such attempted delegation or assignment shall be void.

§14 Headings

The headings contained in these Terms and Conditions are included for mere convenience of reference and shall not affect the language included herein.

§15 Amendment

VTS reserves the right to amend these Terms and Conditions from time to time.

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