

# **Sediver USA Inc.**

Terms & Conditions of Sale

**Effective Date: 08/07/2023**

Revised on 08/07/2023

**SEDIVER USA Inc.**  
**Terms & Conditions of Sales USA**

**1. AGREEMENT.** The contract of sale resulting from documentation on the reverse side or attached hereto together with these terms and conditions ("Contract") constitutes the entire agreement between the parties hereto, except as modified in writing signed by both the Seller and Purchaser. The Seller is SEDIVER USA Inc. and the Purchaser is identified in the Contract. Any terms in the purchase order, irrespective of their materiality, which are either different from or additional to Seller's terms and conditions of sale, are objected to and excluded unless the Seller expressly agrees in writing to such terms. Execution of such forms by Seller to accommodate Purchaser's procedures or to evidence agreed upon change orders shall not be construed as assent to Purchaser's terms. Any representatives, warranties or statements made by any employee, salesperson or agent of Seller not expressed in the Contract shall not be binding to Seller. Acceptance of the goods shipped shall constitute assent to Seller's terms and conditions of sale. The Contract shall be binding upon Purchaser and Seller, and on their successors and assigns.

**2. ACCEPTANCE AND APPROVAL OF ORDER.** A proposal or quotation from Seller shall not be considered as an offer, but the basis for an order from Purchaser which is subject to acceptance by Seller. An order will become binding on Seller only when accepted and approved by the Sales and Credit Department of Seller. Orders are accepted only by Sediver USA. The minimum order is \$1,000.00. Partial orders are subject to price review. Order quantities MUST be in even standard package quantities. In the event an order does not meet the standard pallet size, Seller will revise pricing to reflect (1) an increase in order quantity to the next largest standard pallet quantity, or (2) assess a re-packaging fee of \$150.

**3. CREDIT.** Credit terms of payment must have the approval of Seller's Credit Department and must be specified in writing on Seller's invoice or in the Contract. If Purchaser's credit is found by Seller to be unsatisfactory, Seller may rescind or terminate the Contract. If at any time during the term of the Contract, Purchaser's financial responsibility becomes impaired or unsatisfactory to Seller, Seller reserves the right to stop shipment on notification to Purchaser, demand payment in advance or at time of delivery for future deliveries, or require other security satisfactory to Seller and in the absence thereof, to terminate the unfilled portion of the Contract. Seller will notify Purchaser promptly of its decision to stop shipments and give an advance notice to the extent possible. In the absence of credit terms, sales are for cash.

**4. PAYMENT.** Default unless otherwise stated is Net 30 days in U.S. dollars. Purchaser agrees to make payment at Seller's location specified in the Contract in lawful money of the United States. Purchaser further agrees to make all payments when due to Seller in accordance with the agreed terms of payment in the Contract with no right of retention or set-off. Purchaser agrees to pay a finance charge of 1.5% per month (or, to the extent permitted by law if less) on all delinquent balances if and when assessed by Seller, and any attorney's fees and court costs arising out of and made necessary in collection of Purchaser's obligation to Seller created by the Contract.

**5. TAXES.** Sediver USA will collect taxes Any federal, state or local tax, assessment, fee, duty or charge hereafter imposed on or measured by the products purchased hereunder shall be for Purchaser's account, unless Purchaser furnishes Seller an acceptable exemption certificate from such tax, fee, duty or charge prior to shipment.

**6. FORCE MAJEURE.**

Seller shall not be liable for any delay, impairment, or prevention of Seller's performance, in whole or in part, due to any event, circumstance, or occurrence that is not within Seller's control, including, but not limited to, acts of God, labor disruptions, acts of war, acts of terrorism (actual or threatened), governmental decrees or controls, imposition of or changes to tariffs or duties, changes to commodity markets, insurrections, epidemics, quarantines, strikes, lockouts, shortages, communication or power failures, floods, fires, accidents, explosions, inability to procure or ship products or obtain permits or licenses, inability to procure supplies or raw materials (including fuels), severe weather, catastrophic events, or any other event, circumstance, or cause beyond Seller's control within the normal conduct of its business (collectively, "Force Majeure"). If Seller's performance is so delayed, impaired, or prevented by Force Majeure, Customer agrees that Seller may, at Seller's option: (i) suspend or terminate performance; and/or (ii) increase pricing and/or schedules for delivery or performance, in each case, without liability or penalty to Seller.

**7. CANCELLATION.** Order cancellations and/or deferrals will be subject to a minimum 25% charge of original order valued placed on Seller. Cancellation of Special Order/Non-Stock items not permitted. For stock items, a cancellation request received from Purchaser within two weeks window prior of the confirmed shipment date is not permitted and 100% of charge will apply.

**8. CHANGE.** If Purchaser desires to change any portion of the Contract, it must make such request in writing to Seller. Seller may, in its sole discretion, accept or reject any such request. Prices and delivery schedule are subject to change. If accepted, the Purchaser nonetheless must take delivery and make payment to Seller for all material manufactured and in stock or in process of manufacture at time of notice, and all special materials ordered at time of notice and for which Seller must take delivery, unless otherwise agreed by Seller in writing. All such materials must be removed from Seller's premises within 30 days after payment and payment will be due at time of notice. Changes to Special Order/Non-Stock items subject to receipt of new PO from Purchaser, acceptance of Seller and is subject to price revision from Seller.

**9. INSPECTION AND TESTING.** Seller's standard specifications and tests apply to all orders. All charges for inspections or tests not regularly furnished are for Purchaser's account. Any inspection by Purchaser of Equipment on SEDIVER USA Inc. premises shall be scheduled in advance to be performed during normal working hours. If the order provides for factory acceptance testing, SEDIVER USA INC. shall notify Purchaser when SEDIVER USA INC. will conduct such testing prior to shipment. Unless Purchaser states specific objections in writing within ten (10) days after completion of factory acceptance testing, completion of the acceptance test constitutes Purchaser's factory acceptance of the Equipment and its authorization for shipment.

**10. PRICES.** Prices are subject to change without notice and includes customs duties and other importation or exportation fees, if any, at the rates in effect on the date of SEDIVER USA Inc. proposal. Any change after that date in such duties, fees, or rates, shall result in a price revision to the price from SEDIVER USA Inc. additional cost. Orders based on published prices and accepted for scheduled shipment will be invoiced at Seller's applicable price in effect on the scheduled date of shipment, unless otherwise specifically noted on Seller's order acknowledgement. All prices will be in accordance with applicable government regulations. Orders requiring special packaging may be assessed additional charges. Orders received in less than pallet quantity are subject to additional charges. Unless otherwise specified in writing, all Proposals expire thirty (30) days from the date thereof.

**11. DELAYS.** All orders are accepted subject to Seller's ability to make delivery at the time and in the quantities specified, and Seller shall not be liable for damages for failure to make partial or complete shipment or for any delay in making shipments. Purchaser shall be liable for any added expenses incurred by Seller because of Purchaser's delay in furnishing requested information to Seller, delay resulting from order changes by Purchaser, or delay in unloading shipments at delivery point.

Any information regarding time of performance and/or delivery shall be non-binding, unless otherwise expressly stated by Seller in writing. Time shall not be of the essence for the purposes of delivery of the Products.

All terms of performance and/or delivery shall be subject to (i) correct and timely availability of supplies and raw materials and means to transport products, (ii) Purchaser's delivery of all and complete and timely Purchaser's Information to Seller, (iii) Purchaser's required performances and/or deliveries under the Purchasing Order/Contract (iv) Customer's approvals and plan for testing agreed upfront and listed on Purchaser's order, (v) Customer's compliance with all payment terms set forth hereinbelow, and (vi) Customer's strict compliance with all obligations set forth in these Terms and Conditions. The terms of performance and/or delivery shall be extended by, and for so long as, the above conditions have not been met.

**12. SHIPMENT.** Seller will select method of shipment and routing when transportation charges are for account of Seller. When shipping instructions are specified by the Purchaser, all costs in excess of the most economical method of transportation will be for the account of the Purchaser. The foregoing includes, but is not limited to, carrier's charges for notification prior to delivery, demurrage, delay in unloading, diversion, or reconsignment. If purchaser needs a flatbed, the cost difference between regular truck and flatbed will be charged to the Purchaser, documentation of the difference will be available upon request. In order to perform the delivery on time, Seller needs complete site contact information specified at purchaser order. Seller will contact Purchaser two weeks prior to the delivery date to confirm contact information and site address. Any Purchaser requests for changes after two weeks prior to the delivery date will affect Seller's ability to delivery on time. All costs incurred, not limited to labor and material to prepare the shipment such as product separation; packaging, staging restocking and others will be charged to the Purchaser.

**13. FREIGHT ALLOWANCE.** Freight terms are based on regular, enclosed truck to single destination, unless otherwise stated. If flatbed truck is required, additional charges may apply if order is freight allowed. Same applies for shipments during weekends, nights, expedite and/or air shipments. Seller's freight allowance is \$20,000.00 per order for shipment to one destination within continental United States. For orders to Alaska, Hawaii or Puerto Rico that meet freight allowance requirements freight will be paid to a selected region Port of Exit. The above policy applies to standard dry van/truck ground transit only. The freight allowance terms are "FOT Origin, Freight Prepaid." In the event the freight thresholds are not met, the terms will either be "FCA Origin, Freight Prepaid and Billed" or "FCA Origin, Freight Collect." In some instances, for direct shipments from one of our overseas factories, the terms can be "DDP – Delivery Duty Paid".

**14. TITLE.** Title to products transfers to Purchaser upon delivery to carrier at the point of shipment which will be clearly set forth in the shipment terms of the Contract. On receipt of title, Purchaser is then responsible for proper protection of product, placement and compliance with all regulations and ordinances, and will indemnify Seller against all claims including reasonable attorney's fees for personal injuries or property damage arising from the storage, use or handling of such products.

**15. IN TRANSIT CLAIMS.** Claims for damage or shortage in transit must be made against the carrier by the owner of the shipment according to the FCA terms of the Contract. Purchaser has the responsibility to inspect shipments before or during unloading to identify any such damage or shortage and see that appropriate notation is made on the delivery tickets or an inspection report furnished by the local agent of the carrier in order to support a claim.

**16. CLAIMS.** Notice of claims against Seller hereunder for any reason, must be made to Seller in writing within 30 calendar days after delivery and within any applicable warranty period. Failure to give such notice to Seller shall constitute a waiver by Purchaser of any right later to assert such claim. Products must be inspected by Purchaser upon receipt and notice of defects or damage must be given to Seller within 24 hours of receipt of product.

**17. RETURNS.** All requests for returned goods must first be approved in writing, by the appropriate Seller's authorized representative. After written approval, returned goods shall be accepted for credit only if in saleable condition and only with evidence of Seller's prior written consent and proof of purchase within one year of the original ship date from Seller. Product must be in original packaging and be in standard pallet quantities. Special items of other than normal and standard design regularly sold by Seller cannot be returned. Seller will assess a minimum 25% restocking charge, if applicable. Delivery costs to and from the Purchaser that were paid by Seller will be deducted along with all loading and unloading costs and any costs of repair. Purchaser is responsible for cost of return freight. Sediver will require pictures of pallets, labels and other relevant information prior to start the return process.

**18. CONFIDENTIALITY - INTELLECTUAL PROPERTY.** All drawings, designs and models, specifications or other technical information, methodology, processes, work of authorship and similar work product respectively developed by Seller or its parents, subsidiaries or affiliates, financial status, accounting data, methods of operation, intellectual property (including but not limited to copyrights, patents, trade names, and trademarks), products, equipment, technologies, and other confidential information, either written or oral, shall be considered confidential and proprietary (the "Confidential Information"). Seller shall retain full right, title, license to and interest in any and all Confidential Information which shall at all times remain the property of Seller. Buyer shall not, directly or indirectly, disclose, divulge, reveal, report, publish, transfer or use, for any purpose whatsoever other than in the performance of the Contract, any Confidential Information to any third party without Seller's prior written authorization. Buyer acknowledges that this Contract conveys to Buyer only a limited right to use the Confidential Information in the course of performing the Contract. Purchaser further agrees that, except for such right of use, it shall not assert any right, title, or interest in or to the Confidential Information and shall hold all Confidential Information in strict confidence, using the same degree of care, but not less than reasonable degree of care, as it employs with its own information of like importance.

Seller agrees to defend, and to protect Purchaser against loss or damage usually arising out of any legal action for patent infringement in connection with the manufacture of its products sold to Purchaser, provided Seller is notified within 30 calendar days of any such action with complete information and is given an opportunity to defend. Seller's obligation hereunder shall be subject to the following: That Purchaser has not modified the product and is utilizing it for its intended purpose. In no event shall Seller be liable for any consequential or incidental damaged.

**19. WARRANTY; LIMITATION OF LIABILITY.** Seller warrants title to each individual product sold under the Contract and further warrants for a period of five (5) years after shipment, but only to the extent and limit of the purchase price paid for such individual product, that such product conforms to the specifications set forth in the Contract and is free from defects in material and workmanship under normal service and use for which it was designed. Seller's sole obligation and Purchaser's exclusive remedy under this warranty shall be limited to one of the following, as selected by Seller: delivering to Purchaser a replacement for any product part thereof determined by Seller to be defective; repairing such product or part; or refunding the purchase price (or an equitable portion thereof) paid for such product or part by Purchaser. SELLER MAKES NO WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR MERCHANTABILITY, AND NO OTHER WARRANTY, WHETHER EXPRESS OR ARISING BY OPERATIONS OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE IMPLIED SHALL EXIST IN CONNECTION WITH SELLER'S PRODUCTS OR ANY SALE OR USE THEREOF. Purchaser must notify Seller within 30 calendar days of discovery and within the warranty period of any claim under this warranty. Seller's warranty extends only to the first purchaser of a product from Seller or Seller's authorized distributor. All goods not manufactured by Seller are warranted only to the extent of the warranties of the original manufacturer. Seller disclaims, and shall not be responsible for, any liability arising from tort, including strict liability, and Seller further disclaims, and shall not be responsible for, any liability (whether arising under this or any other provision of the Contract or otherwise) for any costs (including costs of removal and replacement), liabilities, lost profits, loss of good will or any other general, direct, special incidental or consequential damages incurred by Purchaser in connection with Contract or any product purchased thereunder, in all cases irrespective of whether Seller was advised of the possibility of such liability.

**20. INDEMNIFICATION.** Purchaser agrees to indemnify, defend and hold Seller harmless from any and all demands, or claims, actions, or judgments of a third party against Seller, directly or indirectly, relating to injury and/or death of any and all persons and for loss of and/or damage to property arising out of Purchaser's sale, re-sale and/or misuse of products and/or Purchaser's negligence or willful misconduct. This indemnification obligation shall apply even in the event of the fault, negligence or strict liability of Seller.

**21. GOVERNMENTAL REGULATIONS.** Seller warrants that no code, law, regulation, or ordinance of the United States, a state or any other governmental authority or agency of any applicable Executive Order has been violated in the manufacture or sale of the items covered by the Contract and warrants that the equipment, supplies and/or articles covered thereby conform with all such requirements.

**22. COMPLIANCE WITH LAW - CODE OF CONDUCT.** Purchaser shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Contract. Buyer undertakes to strictly comply with Seller's applicable Code of Conduct (available on Sediver Group's website at:

<https://www.sediver.com/company/compliance/> and must conduct business with integrity and within the highest standards of business ethics. The Contract shall be governed by and shall be construed by the law of the State of Arkansas, and any disputes arising hereunder will be heard by a court of competent jurisdiction in Arkansas.