

Gopher Mats, LLC d/b/a Viking Mat Company

Order Confirmation - Terms and Conditions

1. Definitions.

These General Terms and Conditions of Order Confirmation are referred to below as “these Terms and Conditions.” “Seller” means Gopher Mats, LLC d/b/a Viking Mat Company, its subsidiaries or divisions. “Buyer” means the company (ies) referenced herein, its subsidiaries, and when it does business under any assumed business name ordering Goods from Buyer. These Terms and Conditions and the Order Confirmation into which they are incorporated are referred to collectively below as the “Order Confirmation.” The order evidenced by the Order Confirmation is the “Order.” The Goods to be purchased by the Buyer under the Order are referred to as the “Goods.”

2. Entire Contract.

Goods sold to the Buyer will be confirmed with an Order Confirmation from Seller. The Order Confirmation will confirm the verbally transacted contract between Buyer and Seller. The Order Confirmation and the acceptance of it shall be considered a contract in the state in which Seller’s office shown on the face of the Order Confirmation is located and the contract shall be governed by the laws of that state.

Unless a separate written agreement is signed by both parties, the entire contract between Buyer and Seller is contained in the Order Confirmation, except such other terms as may be specifically incorporated in the Order Confirmation by reference.

3. Acceptance of Buyer’s Order Conditioned on Buyer’s Assent to Terms Herein.

Seller’s acceptance of Buyer’s order is expressly conditioned on Buyer’s acceptance of the terms and condition of sales set forth herein in their entirety without any additions, deletions, modifications or exceptions. Any terms or conditions submitted by Buyer (in any order or other communication) that are different from or in addition to the terms and conditions contained herein are hereby objected to and rejected by Seller; shall not be effective or binding on Seller; and shall not become a part of the contract of purchase and sale between Buyer and Seller. Seller’s silence or failure to respond to any terms or conditions submitted Buyer shall not be deemed to be an acceptance or approval thereof.

4. Limitation of Warranty.

THERE ARE NO WARRANTIES, EXPRESS, OR IMPLIED, THAT EXTEND BEYOND THE DESCRIPTION OF THE GOODS IN THE ORDER CONFIRMATION, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. However, Seller warrants that the Goods delivered shall conform to the grade and quantity specified in the Order Confirmation. If the sale is based upon a sample, the sample shown by Seller to Buyer was for demonstration purposes only, and Seller makes no warranty that the Goods delivered shall conform to the sample; conformity of the Goods to the sample is not a part of the basis of the bargain between Seller and Buyer. If the Order includes Goods which have been fabricated in accordance with shop drawings approved or supplied by Buyer, those Goods are only warranted to be in substantial compliance with the specifications of any such drawings.

5. Limitation of Liability.

SELLER'S LIABILITY SHALL BE LIMITED TO THE COST OF REPLACING DEFECTIVE AND/OR NONCONFORMING GOODS AT THE POINT OF DELIVERY AS SPECIFIED IN SELLER'S ORDER CONFIRMATION WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY REJECTION BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY NATURE WHATSOEVER, ARISING FROM NONCONFORMITY OF GOODS OR DELAY IN SHIPMENT, OR ANY OTHER BREACH BY SELLER.

6. Indemnification.

Buyer assumes and agrees to indemnify and save Seller harmless from any and all liability whatsoever which may arise from the use by Buyer or others of the goods sold hereunder, whether used singly or in combination with other materials, whether such liability is based on contract, tort, strict liability or other theory except the extent such liability is caused by Seller's breach of warranty as stated in paragraph #4.

7. Assumption of Liability.

Buyer assumes all risks and liabilities resulting from the use of the shipped Goods. Seller neither assumes nor authorizes any person to assume for Seller any liability in connection with the sale or use of the Goods.

8. Statute of Limitations.

No litigation or arbitration by Buyer concerning the sale shall be commenced later than one year after date of shipment.

9. Inspection, rejection, and claims procedure.

Buyer shall inspect the Goods, at its sole cost and expense. In the event of any claims related to the Goods, including but not limited to claims for compliance with specifications, shortages, defects, nonconformity, errors and for in transit loss or damage, (hereinafter, "Claims"), Buyer shall give written notice of any Claims to Seller within five (5) days of shipment by Seller, except that notice of any claims based on moisture content must be given to Seller within 48 HOURS AFTER RECEIPT OF SHIPMENT BY BUYER. Written notice as required herein shall be sent to _____ if faxed, or sent to _____ and _____ if emailed, or sent via overnight delivery to

_____, together with all documents supporting any Claims and a summary of all material facts upon which any Claims are made. FAILURE TO GIVE TIMELY RECEIVE NOTICE OF ANY CLAIMS IN WRITING SHALL CONSTITUTE IRREVOCABLE AND UNQUALIFIED ACCEPTANCE OF THE GOODS BY BUYER AND SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS WITH RESPECT THERETO. Provided that Buyer provides timely written notice of Claims, Seller may, in its sole discretion, either replace the portion of the Goods found by Seller to be nonconforming on the same terms applicable to the initial orders, ship additional Goods to remedy any shortage or in transit loss as determined by Seller, repair any defects in the Goods confirmed by Seller at Buyer's expense, or refund to Buyer the portion of the purchase price or portion thereof actually received by Seller for the affected portion of the Goods.

10. Title; Risk of Loss.

Unless expressly agreed by Seller, title and risk of loss shall transfer to Buyer upon delivery of Goods to any carrier at Seller's location or other shipping point ("Point of Delivery") irrespective

of whether Seller has sold the Goods “freight prepaid” and notwithstanding any right of Buyer to cancel or return Goods.

11. Force Majeure.

Seller is not responsible for loss or damages resulting from loss of merchandise at sea, or failure to make shipment within the specified time or to ship at all, when such failure is due to delays of carriers or delays caused by labor difficulties, shortages, strikes, stoppages, fires, accidents, failure or delay in obtaining materials or manufacturing facilities, acts of any government affecting Seller in any way, bad weather, causes beyond Seller’s control, acts of God, flood, lightning, war, military operation, terrorist attack or any other force majeure event or contingency that was not foreseen at the time when Buyer placed its order for Goods with Seller. In the event of force majeure, both Buyer and Seller will attempt to overcome it and keep each other informed of progress. If a force majeure event continues for one month, Buyer and Seller will attempt to continue with the agreement. Failing agreement, Seller may terminate the agreement. Seller shall not be liable for any damages or penalties whatsoever, whether direct, indirect, special, consequential, contingent, exemplary, punitive or otherwise, resulting from Seller’s failure to perform or delay in performing as a result of the foregoing.

12. Buyer Compliance.

The Buyer agrees to comply with the following: A) Executive Order 11246 as amended and all regulations promulgated pursuant to that Executive Order including but not limited to the provisions of paragraphs (1) through (7) of the “Equal Opportunity Clause” and the “Certification of Nonsegregated Facilities”, each of which is incorporated herein by reference, B) Section 503 of the Rehabilitation Act of 1973 including the applicable parts of the affirmative action clause entitled “Affirmative Action for Handicapped Workers” (41 CFR 60-741.4) incorporated by reference, C) The Vietnam Era Veterans Readjustment Assistance Act (30 USC §2012) including the applicable parts of the affirmative action clause entitled “Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era” (41 CFR 60-250.4) incorporated herein by reference, D) Executive Order 13496 “Notification of Employee Rights Under Federal labor laws” (29 CFR Part 471, Appendix A to Subpart A) also incorporated herein by reference, E) Buyer agrees to comply with all applicable commercial and public anti-bribery laws, including, without limitation, the US Foreign Corrupt Practices Act, the Canadian Corruption of Foreign Public Officials, and the UK Bribery Act and F) Buyer hereby represents and warrants that neither Buyer, nor any persons or entities holding any legal or beneficial interest whatsoever in Buyer, are (i) the target of any sanctions program that is established by Executive order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury (“OFAC”); (ii) designated by the President of OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, The International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, The Patriot Act, Public law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: “List of Specially Designated nationals and Blocked Persons.” If the foregoing representation is untrue at any time, an event of default will be deemed to have occurred without the necessity of notice to Buyer.

13. Default.

If Buyer breaches or is otherwise in default under the Order Confirmation or under any other contract between the parties hereto, Seller at its option may defer delivery of the Goods until the default is cured, or may treat the default as a repudiation by Buyer of the order in its

entirety, resell the Goods and hold the Buyer liable for such damages as Seller may incur, including consequential and incidental damages. For purposes of the Order Confirmation, Buyer's insolvency shall be a default under the Order Confirmation.

14. Security Interest.

Until the unpaid contract price and any other amounts payable by Buyer to Seller under the Order Confirmation are paid in full, Seller retains lien rights on the goods for the unpaid amounts. Buyer hereby conveys and grants to Seller a security interest in and assigns to the Seller a security interest in all goods purchased from seller, now existing or hereinafter acquired and not paid in buyers proceeds therefrom, including accounts receivable. These terms and conditions shall operate as a security agreement, and seller may file such UCC-1 Financing Statements as it deems necessary to reflect said security interest.

15. Cancellation.

Buyer warrants that Buyer is solvent and that Buyer is able to pay the purchase price for Goods purchased. Seller may cancel because of any arbitrary deductions made by Buyer or failure to comply with contract terms in respect to any shipment, including prior shipments, because of any transfer or changes in Buyer's business, Buyer's insolvency, suit by other creditors, failure of Buyer to meet any financial obligations to Seller, impairment of Buyer's credit worthiness, or unfavorable credit reports made to Seller through usual channels of credit information, unless, Buyer shall pay cash in advance of receiving the shipment to be made. Seller shall retain the right to renegotiate price or cancel in the event of force majeure, mill insolvency, or other causes beyond Seller's control.

16. Arbitration.

Any controversy or claim arising out of or related to any contracts between Buyer and Seller or breach thereof shall be settled by arbitration under the applicable Rules of the American Arbitration Association, or under the rules of any other organization providing arbitration services which may be agreed upon by the parties, with the place of arbitration being the city in which Seller's office shown on the face of the Order Confirmation is located. Judgement may be entered upon the arbitration award. In connection with any arbitration proceeding, each party shall pay (a) one-half of the arbitrator's fees and any administrative charges associated with the proceeding, and (b) all of its own attorney and other professional fees and costs.

17. Collection.

Buyer agrees that if Seller extends credit to Buyer and it becomes necessary for Seller to place unpaid amounts in the hands of an attorney, or collection agency, Buyer will pay any and all costs of collection, including, but not limited to, reasonable attorney fees and any court costs necessary to collect the past due balance. In the event an invoice is over 30 (thirty) days past due, Buyer agrees to pay a service charge of 1-1/2% per month (18% per annum) calculated from the original invoice due date.

18. Environmental.

Buyer acknowledges that the Goods sold to Buyer may contain organic material that may pose an environmental hazard under various laws and regulations. Buyer agrees to familiarize itself (without reliance on Seller) with any hazard of such Goods and their applications and the

containers in which the good are shipped. Buyer agrees to inform and train its employees and customers as to such hazards.

Seller make no representation or warranty of any kind, express or implied, with regard to the existence or nonexistence of mold on the Goods and Buyer waives any and all claims against Seller in connection therewith.

19. Taxes.

Unless otherwise agreed by Seller in writing, all prices are exclusive of applicable federal, state, local and foreign sales, use, excise, value added and other taxes. Any and all current or future tax or other governmental charge applicable to the sale, delivery, shipment or storage of the Goods that Seller is required to pay or permitted to collect shall be for Buyer's account and shall be added to the price, and shall not be subject to any reduction.

20. Waiver.

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

21. Severability.

If any portion of the Agreement or its application is construed to be invalid, illegal or unenforceable, then the other portions of the Agreement or its application thereof shall not be affected thereby and shall be given full force and effect without regard to the invalid or unenforceable portions.