



Viracon Terms of Sale

V I R A C O N[®]

1. **Conditional Acceptance.** Unless otherwise agreed to and accepted by Viracon, any QUOTATION issued by Viracon may be accepted by Buyer only for a period of sixty (60) days from the date the QUOTATION is issued. Buyer's attempted acceptance of a Viracon QUOTATION after this period creates no obligation on Viracon unless subsequently accepted by Viracon in writing. "Buyer" means Viracon's customer as specified on the Viracon QUOTATION.
2. **Terms and Conditions.** Any Viracon QUOTATION is conditioned on Buyer's acceptance of these Viracon TERMS OF SALE. Buyer shall be bound by these TERMS OF SALE without change, unless otherwise set forth in writing and accepted in writing by Viracon. Any terms and conditions from any other source, including but not limited to, Buyer's purchase orders or acknowledgments, are deemed excluded. These TERMS OF SALE shall control and take precedence over any conflicting terms and conditions in any other document. An "Order" or "Purchase Order" means Buyer's purchase order or any other order or contract form accepted by Viracon in writing.
3. **Goods Furnished.** Viracon agrees to furnish only the quantity and type of goods described in the Viracon Order Confirmation, Pro Forma or QUOTATION, which may vary from project plans, specifications, and/or Buyer's purchase order(s). Viracon shall not be obligated to make any changes or additions to the goods described in the Viracon Order Confirmation, Pro forma or QUOTATION unless Viracon agrees in writing and, if necessary, an equitable adjustment is made to the price and delivery terms. Unless otherwise agreed in writing by Viracon, all goods supplied by Viracon under an Order, including those produced to meet an exact specification, will be subject to tolerances and variations consistent with usage of trade, regular Viracon manufacturing practices or practical testing and inspection methods. Such tolerances and variations shall not create any separate Viracon warranties.
4. **Contract Price.** The "Contract Price" means the price for goods to be furnished by Viracon as specifically identified in the QUOTATION, and which is based on the particular drawings, specifications, make-ups, or other contract documents received by Viracon. Items omitted from the QUOTATION are expressly excluded. The Contract Price is conditioned on payment by Buyer within thirty (30) days of the invoice date, and no retainage may be deducted by Buyer from the Contract Price.
5. **Order Holds; Cancellation.** After Buyer's Order has been accepted by Viracon, the Order cannot be put on hold, modified, canceled or changed without Viracon's written consent. In the event that Buyer places any Order on hold for more than thirty (30) days, Buyer shall be responsible for, and reimburse Viracon for, all material, labor and overhead costs incurred by Viracon as a result of the hold. If Buyer cancels any Order, Buyer shall be responsible for payment to Viracon for reasonable cancellation or order change charges. Such cancellation or order change charges may include, but not be limited to, the Contract Price for all goods shipped by Viracon to Buyer, the Contract Price for all finished goods inventory in the possession of Viracon, all other direct costs incurred by Viracon to the extent not able to be mitigated using reasonable mitigation efforts, and storage charges as outlined in Section 8 of these TERMS OF SALE. In addition, if at the time the Buyer cancels the Order Viracon has work in process with respect to the Order on any of its shop floors, Viracon shall be allowed to finish the production on the goods that are on the shop floor at the time the Order is canceled, place the goods in finished goods inventory, and bill the Buyer the Contract Price for such goods.
6. **Other Costs.** Buyer acknowledges and agrees that the Contract Price does not include manufacturer's gross receipts taxes, sales or use taxes, or any other state, local, and federal taxes and/or assessments that may be payable on the transaction, unless otherwise agreed in writing by Viracon. All additional delivery costs arising from local labor agreements shall be the responsibility of Buyer. Buyer further agrees that all square foot pricing is invoiced on the basis set forth in the Viracon QUOTATION. Viracon reserves the right to invoice Buyer for any and all unknown surcharges and miscellaneous costs assessed against Viracon by its vendors after the QUOTATION date.
7. **Delivery; Title to Goods and Risk of Loss.** The delivery date, if specifically stated on the Viracon Order Confirmation, Pro Forma, is an estimate only and Viracon shall not be bound by such date. Viracon shall not be liable for direct, incidental or consequential loss or damage to Buyer, or to any third parties, due to delay or not delivering in accordance with the estimated delivery date regardless of the cause. Buyer has the option of picking up the goods at the Viracon facility. If Buyer does not elect to pick up the goods at the Viracon facility, Viracon will select the method of delivery to the Buyer. Title to the goods shall pass at the time the goods leave the Viracon facility unless otherwise set forth in writing by Viracon. Risk of loss shall be transferred to the Buyer in accordance with the applicable project shipment and delivery Incoterms.

8. **Storage Charges.** Any completed Orders that Buyer fails to accept delivery of goods by the delivery date stated on the Viracon Order Confirmation shall be subject to storage charges at a rate of \$150.00 per crate per month. These storage charges shall be payable by Buyer net 30 days. Under no circumstances shall Viracon be liable for any costs, fees, damages or loss to goods or materials stored pursuant to this Section. Viracon specifically disclaims any liability for, or damage resulting from, the storage of finished goods or materials stored hereunder in any manner contrary to industry standards or specific storage requirements identified by Viracon in any product documentation.
9. **Payment Terms.** Payment terms for any Order shall be specified on the invoice in calendar days, with no retainage or set-off allowed. Buyer's payment obligations shall not be conditioned on Buyer's receipt of payment from any third party. Buyer shall be responsible for Viracon's costs of collection, including but not limited to, reasonable attorney's fees in the event of Buyer's default or non-payment. Viracon reserves the right to withhold future shipments if timely payment for prior shipments has not been received.
10. **Credit Terms.** Viracon may, in its sole discretion, agree to grant credit terms to Buyer. If Viracon exercises its option to refuse to grant credit to Buyer, Viracon shall not be liable for any damage, loss or cost whatsoever to Buyer. Any credit terms are subject to Viracon's continuing approval of Buyer's credit. If, in Viracon's sole discretion and determination, Buyer's credit or financial standing becomes unsatisfactory, Viracon may withdraw or modify its credit terms.
11. **Inspection.** Buyer shall inspect the goods upon receipt and notify Viracon in writing of any claim that the goods are nonconforming within ten (10) days after delivery. Viracon shall be allowed a reasonable opportunity to inspect the goods, and cure any claim of alleged non-conformity, including reasonable access to the goods whether on Buyer's premises, at a storage facility or on the job site. Subject to Buyer's signing a confidentiality agreement and compliance with Viracon procedures and facility safety practices, Buyer may arrange to inspect the goods at Viracon's manufacturing facilities. However, such inspection shall not interfere with Viracon's operations. Buyer's rejection of any in-process goods or non-conforming finished goods arising out of such inspection must be made in writing to Viracon prior to shipment of such goods. No goods may be returned to Viracon for credit without Viracon's prior written consent.
12. **Limited Warranty.** Viracon provides a limited warranty for goods shipped pursuant to an Order. Viracon's warranty terms are set forth in a separate warranty certificate available on request. Viracon's warranty will be void in the event that full payment is not received for goods and services within the agreed upon terms of sale. Viracon's limited warranty, as provided to Buyer, may only be modified upon written approval of Viracon's President or Vice President(s). Any verbal representations intended to modify any existing Viracon limited warranty shall be invalid and unenforceable against Viracon. Extended warranties may be available at an additional cost, and are subject to written approval of glazing details by Viracon's management and/or technical representatives at Viracon's sole discretion.
13. **Disclaimers.** VIRACON EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ANY OTHER OBLIGATION OR LIABILITY NOT EXPRESSLY SET FORTH IN ITS STANDARD TERMS OF WARRANTY. VIRACON SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND. Buyer's rights and obligations regarding any goods supplied by Viracon, and proven to be defective, are limited to those set forth in Viracon's Limited Warranty provided to Buyer. Viracon will not accept any charge or expense submitted by Buyer or any third party, including but not limited to any labor costs for modification, removal, inspection, testing or installation of any goods sold by Viracon under an Order or for any replacement goods.
14. **Limitation of Liability.** Viracon shall not be liable or responsible for any system or application design, either to Buyer or any third party. Under no circumstances shall Viracon be liable to, or agree to indemnify Buyer or any third party for, any loss, costs, damage or expense (including attorney's fees) resulting from Buyer's or any third party's acts, omissions or conduct. Buyer shall defend, indemnify and hold Viracon, its employees, agents or assigns harmless from and against any and all loss, costs, damage, or expense (including attorney's fees) resulting from any charge or claim of personal injury or property damage arising out of Buyer's failure to perform any obligations under the Order, or for the negligence, intentional acts or willful misconduct of Buyer, its employees, agents or representatives.
15. **Force Majeure.** Viracon will not be responsible for its failure to perform any obligations to Buyer, or the delay in performance thereof, caused by any Force Majeure event, or other action beyond its reasonable control. "Force Majeure" will include, but not be limited to, acts of nature, floods or fire; transportation, power or other supply shortages or unavailability; strikes or labor shortages; failure or delays of any third party vendors or subcontractors; government actions, orders or restrictions; wars, insurrections, acts of terrorism; or the failure of any suppliers, subcontractors, carriers, or party to substantially meet its performance obligations under this Agreement. If the Force Majeure event continues for a period of time that makes performance of the project impossible or impracticable, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party.



16. **Governing Law.** This agreement, and any Order, shall be governed by, and construed according to, the laws of the State of Minnesota.
17. **Entire Agreement.** Viracon's QUOTATION, these TERMS OF SALE, Viracon's Order Confirmation, Pro Forma, Viracon's Limited Warranty (if applicable, and as issued by Viracon), and any supplemental documents annexed hereto by Viracon, contains the complete and entire agreement between the parties as to the subject matter hereof, and replaces and supersedes any prior or contemporaneous communications, representations, or agreements, whether oral or written, with respect to such subject matter.

