



4-STAR Hose & Supply, Inc.

Terms and Conditions of Sale

Last Updated: August 9, 2019

These Terms and Conditions of Sale (the “**Terms**”) control 4-STAR Hose & Supply, Inc.’s (hereinafter referred to as “**4-STAR Hose**”) sales of Products and Services (as defined below) to any buyer or customer (hereinafter referred to as a “**Buyer**”).

1. **Definitions:** “**Products**” means the equipment, parts, materials, supplies, and other goods sold by 4-STAR Hose to Buyer. “**Services**” means the services provided by 4-STAR Hose to Buyer.
2. **Buyer’s Acceptance of Terms:** If there is a conflict between the provisions of a Buyer’s purchase order, an invoice, or any other contracts, representations, or agreements (whether written or oral), the provisions of these Terms shall control. These Terms may not be waived or modified except as specifically set forth in writing by 4-STAR Hose. **By accepting delivery of Products from 4-STAR Hose or by purchasing any Products or Services from 4-STAR Hose, Buyer acknowledges these Terms and agrees that they are incorporated by reference into any invoice or purchase order, and Buyer agrees to comply with these Terms.**
3. **Pricing:** All prices are F.O.B. shipping point unless otherwise specified. Product dimensions and/or quantities are subject to change. Quoted prices are subject to the addition of applicable federal, state or local taxes, and subject to change if Products are not shipped within 10 days. Otherwise, prices in effect at time of shipment will prevail. It is the obligation of Buyer to provide evidence of sales tax exemption to 4-STAR Hose. Notwithstanding the foregoing, in the event that sales tax is determined to be due upon any purchase, Buyer will pay the amount of such tax to 4-STAR Hose for payment to the appropriate taxing authorities.
4. **Order Acceptance:** 4-STAR Hose reserves the right to refuse purchase orders. Any Buyer purchase order is subject to approval and acceptance by an authorized representative of 4-STAR Hose and is subject to these Terms. 4-STAR Hose expressly limits its acceptance to these terms. Additional or different terms in Buyer’s purchase order shall not be binding on 4-STAR Hose, and are hereby expressly rejected.
5. **Order Changes:** Any Buyer requested changes to an existing order may result in a delayed scheduled ship date for that order. If, pursuant to Buyer’s written direction or request, any change is made in the items to be furnished or any work to be performed, the agreed price will be equitably adjusted to reflect such change and the time for completion will be extended to the extent required to make such change. No change is binding on the parties unless mutually agreed in writing by the parties. The changed order will remain subject to these Terms.



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6. **Product Inspection:** Buyer agrees to inspect the Products within 72 hours after receipt of the Products, and Buyer agrees to promptly notify 4-STAR Hose of any readily-apparent defects or nonconformities. Buyer waives any right to object to such defects or nonconformities later than 72 hours after receipt of the Products.

7. **Warranties:** ALL PRODUCTS NOT MANUFACTURED BY 4-STAR HOSE ARE SOLD ONLY WITH THE WARRANTIES PROVIDED BY THE MANUFACTURER OF THE PRODUCTS, IF ANY. 4-STAR HOSE MAKES NO OTHER WARRANTY WITH RESPECT TO THE PRODUCTS, AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. 4-STAR HOSE PERSONNEL ARE NOT AUTHORIZED TO ALTER THIS DISCLAIMER OF WARRANTY.

4-STAR HOSE IS A DISTRIBUTOR AND NOT A MANUFACTURER OF PRODUCTS. ACCORDINGLY, ANY WARRANTY OF QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE IS THAT OF THE MANUFACTURER ONLY AND NOT THAT OF 4-STAR HOSE. 4-STAR HOSE AGREES TO USE COMMERCIALY REASONABLE EFFORTS TO CAUSE ITS MANUFACTURERS TO FURNISH PRODUCTS THAT WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP, WILL BE FREE FROM PATENT INFRINGEMENT, AND WILL BE MERCHANTABILITY. SHOULD A PRODUCT FAIL TO MEET ANY MANUFACTURER'S WARRANTY, THEN UPON NOTIFICATION THEREOF AND SUBSTANTIATION THAT THE PRODUCT HAS BEEN STORED, INSTALLED, MAINTAINED, AND OPERATED IN ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS AND STANDARD INDUSTRY PRACTICE, 4-STAR HOSE SHALL ASSIST BUYER IN OBTAINING SUITABLE REPAIR OR REPLACEMENT, OR OTHER REMEDY, AS PROVIDED IN THE APPLICABLE MANUFACTURER'S WARRANTY.

ALL PRODUCTS ARE SOLD FOR COMMERCIAL USE ONLY AND ARE NOT INTENDED FOR USE BY CONSUMERS. ACCORDINGLY, 4-STAR HOSE DISCLAIMS ALL WARRANTIES TO CONSUMERS, AS DEFINED BY THE MAGNUSON-MOSS ACT, ANY APPLICABLE CANADIAN CONSUMER PROTECTION ACT, AND ANY APPLICABLE STATE CONSUMER PROTECTION ACT.

8. **Limitation of Liability:** 4-STAR HOSE SHALL NOT BE LIABLE FOR SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS INTERRUPTION LOSSES) DIRECTLY OR INDIRECTLY ARISING OR RESULTING FROM THE BREACH OF ANY OF THESE TERMS OR FROM THE SALE, HANDLING, OR USE OF THE PRODUCTS SOLD OR SERVICES RENDERED, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. 4-STAR HOSE'S LIABILITY HEREUNDER, FOR BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, IS EXPRESSLY LIMITED AT THE OPTION OF 4-STAR HOSE TO: (A) REPLACEMENT AT THE AGREED POINT OF DELIVERY OF ANY PRODUCTS FOUND TO BE DEFECTIVE OR NOT TO CONFORM TO THE SPECIFICATIONS SET FORTH HEREIN, (B) REPAIR OF SUCH PRODUCTS, OR (C) REFUND OR CREDITING TO BUYER OF THE PRICE OF SUCH PRODUCTS. This limitation of liability provision is a material basis for the parties' bargain and



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reflects the bargained-for allocation of risks between 4-STAR Hose and Buyer, without which 4-STAR Hose would not have agreed to provide the Products or services at the price charged.

9. **Delivery; Title; Risk of Loss:** Buyer acknowledges delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise agreed in writing by 4-STAR Hose, delivery will be made and title will pass to Buyer F.O.B. point of shipment. Expense and risk of loss of transporting the goods shall pass to Buyer at point of shipment.
10. **Delivery in Installments:** 4-STAR Hose reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of the obligations to accept and pay for remaining deliveries.
11. **Payment:** Unless 4-STAR Hose has elected to extend credit to Buyer, Payment is due upon delivery of Products or completion of Services. If 4-STAR Hose has elected to extend credit to Buyer, then payment is net 30 days from the invoice date, or such other number of days as agreed to in writing by 4-STAR Hose. U.S. Postal Service post mark shall not be determinative. Discounts are not available for payment by credit card or for cash purchases. Early pay discounts may be available if agreed to in writing by 4-STAR Hose.

Should the financial responsibility of Buyer at any time become unsatisfactory to 4-STAR Hose, 4-STAR Hose shall have the right to require payment for any shipment in advance or, in the alternative, the provision of satisfactory security. If Buyer fails to make payment in accordance with these Terms or fails to comply with any provision of these Terms, 4-STAR Hose may at its option, in addition to any other remedies, cancel any unshipped portion of an order and other pending orders. Buyer shall remain liable for all unpaid accounts. In the event Buyer fails to make payment in accordance with these Terms, the account shall be deemed to be delinquent and a late charge of 1-½% (or the maximum allowed by law, if less) per month will be assessed on the unpaid balance. Buyer agrees to pay all collection costs and expenses, including reasonable attorney's fees, incurred by 4-STAR Hose in collecting or attempting to collect such account. If any check tendered by Buyer in payment is dishonored upon presentment for payment, then 4-STAR Hose, in addition to all other rights and remedies contained herein, may assess a dishonor charge of \$50.00.

12. **Freight and Handling:** Unless otherwise provided in writing, freight charges on all shipments, and spotting, switching, demurrage, or drayage at destination are to be paid by Buyer. All incoming shipping and handling charges on all material on which the supplier of said material does not pre-pay or allow freight into 4-STAR Hose's warehouse, and all outgoing shipping and handling charges on all shipments from 4-STAR Hose to Buyer shall be borne by Buyer. Any difference in the amount of freight from that shown on the invoice as being included, is for Buyer's account. 4-STAR Hose reserves the right to



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designate origin and intermediate carriers. If a specific delivering carrier is required, Buyer must designate such carrier in writing to 4-STAR Hose prior to shipment.

13. **Taxes:** Prices do not include any present or future sales, use, excise, or similar taxes. All such taxes shall be for Buyer's account.
14. **Delay; Force Majeure:** 4-STAR Hose shall not be liable for any failure or delay in manufacture, shipment, or delivery of Products resulting from any cause beyond 4-STAR Hose's control, including, but not limited to, provisions of law or governmental regulations, accident, explosion, fire, windstorm, flood, or other casualty, strike, lockout, or other labor difficulty, riot, war, terrorist act, insurrection, shortage of or inability to secure labor, raw materials, production, or transportation facilities. Shipping dates are approximate and are based on conditions at the time of quotation. 4-STAR Hose shall not be liable for failure or delay in performance due to prior sale of Products. In the event of such delay, there will be no termination and the date of delivery shall be extended for a period equal to the time lost by reason of the delay.
15. **Order Cancellation:** No order may be canceled or changed in whole or in part without the prior written consent of 4-STAR Hose. Cancellation will not be accepted on products that are not kept in 4-STAR Hose's regular stock, which are in the process of manufacture or customization, or are ready for shipment. Shipment of Products cannot be extended beyond the original shipping date specified without 4-STAR Hose's written consent.
16. **Order Termination:** In addition to any remedies that may be provided under these Terms, 4-STAR Hose may terminate an order with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due to 4-STAR Hose; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
17. **Specifications:** Specifications and instructions are in accordance with Buyer's directions and full responsibility for their correctness is assumed by Buyer.
18. **Fabrication:** In the event that the sale involves the fabrication of any Products by 4-STAR Hose, including without limitation hose or fluid power products, then the responsibility for their correctness of the specifications for such fabrication shall be the sole responsibility of the Buyer.
19. **Claims:** Buyer must make claims for errors, shortages, or defective Products within ten (10) days after receipt of Products. Cosmetic blemishes which do not affect performance shall not be considered a defect.



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20. **Waiver:** Waiver by 4-STAR Hose of any breach or right of these Terms shall not be construed as a waiver of any other breach or right.
21. **Return Goods Policy:** No Products will be accepted for return without a 4-STAR Hose approved Return Goods Authorization (RGA). All returns are subject to a restocking charge. Special ordered or modified Products are not returnable.
22. **Application of Credits:** 4-STAR Hose may apply any credits to the account of the Buyer, including the off-set of any unpaid invoices, late charges, or others amounts due to 4-STAR Hose. Any credits remaining unapplied for one (1) year, may, at the discretion of 4-STAR Hose, be turned over to the appropriate state agency responsible for unclaimed property.
23. **Aerospace, Nuclear, and Other Hazardous Activities:** Unless specifically acknowledged and agreed in writing by 4-STAR Hose, Products sold by 4-STAR Hose may not be used in connection with any aerospace craft, any nuclear facility, or any other hazardous activity, including without limitation, military, missile, or other critical application. Buyer agrees to indemnify and hold 4-STAR Hose harmless from any liability that results from Buyer's use that is inconsistent with this paragraph.
24. **Products Sold for Buyer's Export:** Buyer assumes responsibility and liability for compliance with all U.S. and international laws, treaties, and customs rules and regulations applicable to the export of Products by Buyer.
25. **Choice of Law; Venue:** The PO and these Terms and shall be governed by the laws of the State of Texas, without regard to conflict of law principles. Any lawsuit or other action arising out of the transaction between 4-STAR Hose and Buyer shall be filed in a state or federal court of Dallas, Texas and the parties expressly submit to the exclusive jurisdiction of, and consent to venue in, those courts.
26. **Entire Agreement:** The 4-STAR Hose invoice and these Terms constitute the entire agreement of 4-STAR Hose and Buyer with respect to the matters hereto. No statement, recommendation or assistance made or offered by 4-STAR Hose through its salespersons or other representatives to Buyer with respect to the use of any Product sold by 4-STAR Hose shall be or constitute a waiver by 4-STAR Hose of any of the provisions of these Terms.
27. **Intellectual Property Infringement:** 4-STAR Hose is unable to guarantee that no patent rights, copyrights, trademarks, or any other intellectual or other rights of third-parties are infringed by goods received from suppliers and/or buyers via 4-STAR Hose or third-parties via them, including but not limited to goods, models and drawings for the manufacture and/or delivery of the Products.

4-STAR Hose takes no responsibility for the legality of Buyer's designs or installation procedures. If any products are assembled or sold by 4-STAR Hose to meet Buyer's particular specifications or



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requirements, Buyer agrees to defend, indemnify, and hold harmless 4-STAR Hose against all suits at law or in equity and from all damage, claims, and demands for actual or alleged infringement of any United States or foreign Letters Patent and to defend any suit or action which may be brought against 4-STAR Hose for any alleged infringement because of the sale of the products covered hereby.

28. **Survival:** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms including, but not limited to, the following provisions: 2, 7, 8, 11, 17, 23, and 25 to 29.

29. **General:** Each party agrees to perform all further acts and execute, acknowledge, and deliver any documents reasonably necessary, appropriate or desirable, to carry out the provisions of these Terms. If any one or more of the provisions of these Terms shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby. The relationship between the parties hereto is that of independent contractors. Nothing in a 4-STAR Hose invoice or these Terms shall be construed as creating any partnership, joint venture, or agency between the parties. Buyer shall not assign its orders nor any of its rights or obligations thereunder without 4-STAR Hose's prior written consent.