



SUSPA, INCORPORATED TERMS OF SALE

All sales of products by Suspa, Incorporated (“**Seller**”) are made on the following terms and conditions. In these Terms of Sale “**Buyer**” means the person to whom Seller contracts to sell products or services, “**goods**” means any products that Seller contracts to sell to Buyer, and “**Contract**” means the contract between Seller and Buyer with respect to the goods.

1. **Agreement.** As stated on the face of the quotation or acknowledgment to which these Terms of Sale apply, the quotation or acknowledgement is Seller’s revocable offer to sell. If the quotation or acknowledgment nevertheless is in legal effect an acceptance of an earlier offer by Buyer, then Seller’s acceptance is conditional upon Buyer’s assent to all terms of the quotation or acknowledgment, including these Terms of Sale, that are additional to or different from the terms of Buyer’s offer. By signing and returning a copy of the quotation or acknowledgment or by accepting the offer electronically or by accepting or paying for the goods, Buyer (1) accepts Seller’s offer and (2) if the quotation or acknowledgment is in legal effect an acceptance of an earlier offer by Buyer, assents to all terms of the quotation or acknowledgment, including these Terms of Sale, that are additional to or different from the terms contained in Buyer’s offer.

2. **Payment Terms.** Unless Seller agrees otherwise in writing, payment in full of the price is due thirty (30) days after the goods are shipped, without discount, except that if at any time Seller determines that Buyer’s financial condition or credit rating does not justify a sale on credit or if Buyer is at any time in default in any indebtedness or obligation that Buyer owes to Seller, then Seller may require advance payment or may ship C.O.D. Any payment that is not made when it is due shall accrue a late charge of 1-1/2% per month. Buyer must make payment at the place that Seller specifies in its invoice.

3. **Delivery and Risk of Loss.** Unless Seller agrees otherwise in writing, Seller shall deliver the goods F.O.B. (Uniform Commercial Code term) Seller’s facility from which the goods will be shipped, except that if Buyer’s facility is located outside the United States, then Seller shall deliver the goods EXW (Incoterms 2000) Seller’s facility, except that, in either case, risk of loss of the goods shall pass to Buyer upon identification of the goods to the contract between Buyer and Seller. Any delivery date that Seller specifies is Seller’s best estimate. Seller shall not in any event be required to ship the goods unless and until Buyer shall have paid in full the purchase price of all tooling that Seller shall have ordered for use in producing the goods. Seller may ship all the goods at one time or in portions from time to time.

4. **Taxes.** Seller’s price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all of those taxes, whether or not Seller invoices Buyer for them. If Buyer does not furnish to Seller an appropriate sales and use tax exemption certificate with respect to Buyer’s purchase of the goods and if Seller is required by a governmental entity to collect and remit sales or use tax with respect to Seller’s sale of the goods to Buyer, then Seller’s invoice to Buyer for the purchase price shall include, and Buyer shall pay to Seller, the full amount of that tax.

5. **Unavoidable Delay.** If Seller is not able to finish and deliver the goods to Buyer on time because of anything that Seller cannot control (such as casualty, labor trouble, accidents, unavailability of supplies or transportation or Buyer’s failure to approve production samples), then the estimated delivery time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages that the delay causes.

6. **Changes.** Seller shall have the right to make design or engineering changes in its parts, equipment, processes and methods of manufacture, but Seller will not, without Buyer’s prior approval, make any changes in operational or dimensional specifications that Buyer submits.

7. **Defects; Remedies.** If an item of the goods that has been properly installed and not subject to abuse or misuse proves to be defective (as defined below) within the Applicable Warranty Period after the date of manufacture of the item by Seller or, if applicable, by Seller’s supplier and if Buyer returns the item to Seller within that period, F.O.B. Seller’s plant in Grand Rapids, Michigan, then (except as stated in the footnote at the end of this paragraph) Seller shall, at Seller’s option, either repair or replace the defective item, at Seller’s expense.* If Seller fails to repair or replace a defective item within a reasonable time, then Seller shall be liable to Buyer for the lesser of (1) the reasonable costs of repair or replacement by a third party or (2) that part of the purchase price of the defective goods that Buyer shall have paid, but Buyer shall not obtain repair or replacement by a third party without giving Seller at least fifteen (15) days prior written notice, during which time Seller may repair or replace the defective item. An item shall be considered “defective” if Seller finds that it is defective in materials or workmanship and if the defect materially impairs the value of the goods to Buyer, except that if Buyer shall have approved drawings of, or specifications for, or production samples of the goods, then the goods shall not be defective to the extent that they conform to the drawings, specifications or samples. This paragraph sets forth Buyer’s sole and exclusive remedies for any defect in the goods. The Applicable Warranty Periods are:

Product	Applicable Warranty Period
TITAN / CLASS 4 / PLUS SERIES gas cylinder assembly and column assembly*	Lifetime of the chair in which it is originally installed*
HEAVY DUTY / AUTO HEIGHT AUTO RETURN columns	Five years and three months
ALL other gas cylinders and column assemblies used for the height adjustment of swivel chairs*	Three years and three months*
VARILOCK lockable gas springs	Five years and three months
Type 18 lockable gas springs	One year and three months
VOB lockable gas springs	Two years and three months
TYPE 16 gas cylinder assembly	Five years
MOVOTEC systems and components	Two years
ALL other SUSPA products	Two years and three months

* Seller’s warranty with respect to column assemblies and gas cylinders assumes that the chair in which the column assembly or gas cylinder is installed is used an average of not more than forty hours per week. If the chair is used more than an average of forty hours per week, then Seller shall not be obligated to repair or replace the column assembly or gas cylinder and shall not have any other obligation or liability under this *Paragraph 7* with respect to the column assembly or gas cylinder.

8. **Limitations.** EXCEPT AS STATED IN *PARAGRAPH 7*, SELLER DOES NOT MAKE ANY WARRANTY AS TO THE GOODS AND, IN PARTICULAR, DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS. Seller shall not have any tort liability to Buyer with respect to any of the goods and shall not be liable for consequential or incidental damages that arise from any product defect, delay, nondelivery or other breach. Buyer shall not have any right of rejection or of revocation of acceptance of the goods.

9. **Solvency and Security Interest.** Buyer represents that Buyer is solvent. Seller retains a security interest in the goods to secure payment of the price and all other indebtedness that Buyer now and in the future owes to Seller.

10. **Permits and Compliance.** Seller is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the goods. Seller does not make any promise or representation that the goods will conform to any law, ordinance, regulation, code or standard.

11. **Safety Features.** Buyer shall install and operate the goods properly and according to any applicable operating instructions or specifications that Seller furnishes to Buyer, and Buyer shall not remove or change any safety device, warning or operating instructions that Seller placed on the goods.

12. **Components of Another Product.** If any of the goods constitute parts or components that are to be incorporated or installed in a product that is manufactured or assembled by or for Buyer, then Buyer shall (1) obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses that are required for installation or operation of the product, (2) cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (3) place on the product all safety devices and warnings, and furnish to its buyer all operating instructions, that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

13. **Resale.** On any resale of the goods, Buyer shall contractually limit its buyer's rights and remedies against both Buyer and Seller to the same extent that *Paragraphs 7* and *8* above limit Buyer's rights and remedies.

14. **Quantities.** Seller may overrun or underrun the agreed-upon quantities by up to 5%, and Buyer shall pay Seller at the unit price for quantities that Seller delivers within these limits. Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of goods (subject to any adjustment under the preceding sentence) must be submitted to Seller in writing within thirty (30) days after Buyer receives the goods. If Buyer fails to do so, then it shall be conclusively presumed that the proper quantity was delivered.

15. **Blanket Purchasing Agreement.** If the Contract is a blanket purchasing agreement under which Buyer will from time to time issue to Seller "releases" with respect to portions of the goods, then, except to the extent that Seller otherwise expressly agrees in writing, (1) when Buyer issues a release for any of the goods, Seller shall be permitted to ship all of those goods within the time period that Seller's quotation specifies or that Seller otherwise agrees to in writing, notwithstanding any contrary provision in the release, (2) any delivery dates specified in any release shall be extended automatically to the extent that Seller is not reasonably able to meet those dates and (3) Buyer shall be obligated to release the entire quantity of goods provided for in the Contract within one year after the date on which the Contract is formed.

16. **Tooling.** If Seller imposes and Buyer pays a separately-identified charge for tooling to be used in the manufacture of the goods, then the tooling shall be the property of Buyer, subject to the following: (1) risk of loss of the tooling shall at all times remain with Buyer; (2) Buyer shall maintain standard fire and extended coverage insurance with respect to the tooling for its full replacement value, shall cause Seller to be named as an additional insured on the policy and, upon Seller's request, shall give Seller evidence of Buyer's compliance with this clause, (3) Seller retains a security interest in the tooling to secure all obligations that Buyer at any time owes to Seller; (4) Buyer shall not have any right to possess the tooling as long as Seller has any outstanding obligation to sell to Buyer goods whose manufacture requires use of the tooling; (5) Buyer shall reimburse Seller on demand for all costs of modifications of the tooling that are made reasonably necessary by changes in the specifications for the goods; and (6) upon Seller's demand, Buyer shall immediately remove the tooling from Seller's premises, at Buyer's expense, and if Buyer fails to do so within ten days after that demand, then Seller may destroy or otherwise dispose of the tooling, without further notice or liability to Buyer.

17. **Intellectual Property and Confidentiality.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that Seller creates or develops in the course of Seller's design, development or manufacture of the goods and all drawings and specifications that Seller provides to Buyer ("**Intellectual Property**") shall be Seller's sole property, and Buyer assigns, and agrees to assign, to Seller all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about Seller's business, operations or activities, except to the extent necessary for Buyer to use the goods. If a provision in this paragraph at any time directly conflicts with a provision in another agreement between Buyer and Seller, then the provision in the other agreement shall govern.

18. **Cancellation.**

(a) Buyer does not have any right to cancel its agreement to buy the goods from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts that Seller determines) for (1) the realizable value to Seller of any standard components that Seller purchased or ordered before cancellation, (2) the realizable scrap value to Seller of the remaining material and tooling that Seller purchased, fabricated or ordered before cancellation and (3) any direct labor costs that Seller saved by reason of the cancellation.

(b) If Buyer fails to pay or perform any indebtedness or obligation that Buyer at any time owes to Seller (whether or not it is related to the sale of goods to which these Terms of Sale apply), then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Seller to sell goods or services to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

19. **Indemnity.** Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including consequential and incidental damages and attorney fees, that Seller incurs as a result of (1) Buyer's breach of any of Buyer's obligations under these Terms of Sale, (2) any claimed unfair competition or patent, trademark or copyright infringement or any other claim that results from Seller's manufacture of the goods to Buyer's specifications, (3) Buyer's modification of any of the goods or (4) the incorporation or installation of any of the goods in a product that is manufactured or assembled by or for Buyer.

20. **Seller's Rights.** Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative, and Seller may exercise them from time to time. Seller's waiver of any right on one occasion shall not be a waiver of any future exercise of that right.

21. **Time For Bringing Action.** Any action that Buyer brings against Seller for breach of the Contract or for any other claim that arises out of or relates to the goods or their design, manufacture, sale or delivery must be brought within one year after the cause of action accrues.

22. **Applicable Law.** The Contract shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law, excluding the United Nations Convention on Contracts for the International Sale of Goods. Either party may bring any action that arises out of or relates to the Contract in any federal or state court in Grand Rapids, Michigan, that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

23. **Complete Agreement; Amendment.** The terms on any quotation, acknowledgment or invoice that Seller issues to Buyer and these Terms of Sale contain the entire agreement between Buyer and Seller. Any change in the Contract must be by a signed writing.