

## TERMS AND CONDITIONS OF SALE

**1. ACCEPTANCE.** Any quotation for the sale of goods by Santa's Own ("Seller"), and any order for the purchase of goods from Seller, shall be subject only to the terms and conditions set forth herein, and the terms and conditions hereof supersede any provision of Buyer's purchase order or other documents which are at variance with or purport to be in addition to these terms and conditions. There are no understandings or agreements, written or verbal, other than as set forth herein; and no additions, deletions or modifications of these terms or any matter set forth on the face hereof, proposed by Buyer in its printed forms or otherwise shall bind Seller unless accepted by Seller in writing, regardless of whether such other terms would materially alter the terms hereof. Any quotation issued by Seller is for informational purposes only, does not constitute an offer and expires thirty (30) days after its date, and may be reinstated only by written confirmation by Seller. Stenographic and clerical errors are subject to correction.

**2. PRICES.** Prices do not include (and Buyer shall be responsible for) any applicable sales, use, transfer, excise or other taxes, tariffs or custom duties; the cost of shipping and freight. Prices are subject to equitable adjustment up or at any time before delivery should economic factors beyond Seller's reasonable control, such as the price of materials or governmental actions, necessitate such adjustment.

**3. STANDARD TERMS.** Seller accepts credit cards (Visa and Mastercard) for orders less than \$1,200. Terms of payment, for orders between \$3,000 and \$7,000, are net thirty (30) days from invoice date. Christmas dating 12/10 is available with approved credit for orders in excess of \$7,000. Wire Transfer is required for Direct Import orders. Payments not received when due are delinquent. Interest at the rate of two percent (2%) per month (twenty-four percent (24%) per annum) or the maximum rate permitted by law, whichever is less, may be assessed on a monthly basis on delinquent accounts, and Buyer agrees to pay the same. Buyer further agrees to reimburse Seller for all costs of collection, including attorneys' fees and court costs. Send orders and payments to: Santa's Own, 2950 Westway Drive, Suite 111, Brunswick, Ohio 44212. 800-684-0601 (Toll Free) 330-220-7091 (Fax)

**4. SHIPMENT.** Goods will be shipped F.O.B. Cleveland, Ohio and shipped freight collect. Seller shall exercise sole discretion in selecting a method of shipment unless a preferred method of shipment is specified in writing by Buyer and Buyer has agreed to pay the costs thereof. All risks of loss shall pass to Buyer upon delivery of the goods to the applicable carrier. However, title to the goods and right to stop delivery in transfer shall remain with Seller until Seller receives payment in full of the purchase price as set forth in Paragraphs 2 and 3 above. Title to the goods shall pass to Buyer when the final payment therefor is made in cash or immediately available funds. Notwithstanding the foregoing, if Buyer requests that Seller delay the shipment of any goods ordered hereunder, then Seller may issue invoices for such goods and store such goods at Buyer's sole cost and expense and at Buyer's risk.

**5. BACKORDERS.** Backorders will be shipped in accordance with pricing and terms in effect at the time of the original order. This policy applies and backorders will be shipped through December 15<sup>th</sup>, unless notified of cancellation prior to shipment.

**6. DELIVERY.** Shipping dates are approximate only and subject to confirmation at the time of the Contract award. Seller is not responsible for delays or nonperformance resulting from (a) delays in receipt of final specifications, instructions or other required information from Buyer; (b) changes in specifications; or (c) force majeure, including, without limitation, strikes, labor disturbances, material shortages, nonperformance by subcontractors or suppliers; or other abnormal manufacturing conditions, delays or failures of carriers; or communications, fire, flood, storms, accident, riot, war and invasion, governmental requisitions or priorities or acts of God; or other causes beyond Seller's reasonable control. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF DELAY OR FAILURE TO DELIVER.

**7. CANCELLATION.** Orders are not subject to cancellation or modification, in whole or in part, after Seller's acceptance, except with Seller's express written consent. Seller may require, as a condition to such consent, payment by Buyer to Seller of an amount specified by Seller to compensate Seller for: (a) the price of all goods that have been delivered and not previously paid for; plus (b) the actual cost incurred by Seller that is properly allocable to the goods not delivered at the time of decrease or cancellation, including, without limitation, the costs of materials or other items purchased for use in producing such goods; plus (c) the profit, including reasonable overhead, that Seller would have realized from full performance by Buyer; plus (d) the reasonable costs incurred by Seller in making settlement and effecting collection hereunder provided that items listed as special preparations are not subject to cancellation except by payment of the full sales price. Buyer may require delivery of any goods for which payment is made.

**8. CLAIMS POLICY.** Buyer agrees to inspect all goods immediately upon delivery. All claims, whether concealed or not, is the responsibility of the Buyer. No claim for damaged goods shall be valid and all goods delivered shall be conclusively deemed accepted and to conform to contract requirements, unless rejection is made or specific objection or notice of damage or nonconformity is given in writing within fourteen (14) days of delivery. Any carton damage or shortages should be noted on the bill of lading at the time of receipt of the shipment, per I.C.C. regulations. If concealed damage for loss is noted by the account while unpacking the shipment, the carrier should be notified immediately per .C.C. regulations. Seller must be notified in writing: include a copy of the carrier's claim form of any damage of loss claims. Failure to timely notify Seller in the manner prescribed above shall release Seller from any and all liability or claims with respect thereto.

**9. RETURN POLICY.** All returns whether defective or not must be pre-approved by Seller and issued a return authorization number with such number clearly marked on the outside of the shipping container. All returned merchandise must be shipped prepaid to our warehouse: Santa's Own, 11052 Pearl Road, Strongsville, Ohio 44136. A 25% handling charge will be assessed for non-defective merchandise (which must be returned in new condition and in original undamaged packaging free of all accounts price marking). Returns of new merchandise are subject to approval by Seller in its sole discretion. All returns will be inspected and if information cannot be verified at current quantity net price, net of available discounts related advertisement accrual and/or payments will be reduced accordingly.

**10. PROPRIETY RIGHTS.** Seller makes no warranty that the goods will be delivered free of the rightful claim of any third party by way of infringement or the like. Buyer shall notify Seller if making, using or selling the goods will constitute infringement of any proprietary right, and Buyer shall indemnify, defend and hold harmless Seller, its successors and assigns, against all liabilities, expenses and damages resulting from any claim of infringement of any proprietary right. If Seller determines, in its sole discretion, that making, using or selling the goods would result in the infringement of any proprietary right, Seller reserves the right to withdraw the quotation and to cancel this Agreement, without liability on the part of Seller.

**11. LIMITATION OF ACTIONS.** Any action for a breach of contract or otherwise arising out of Seller's acceptance of Buyer's order or goods supplied must be commenced within one (1) year after the cause of action has accrued and, thereafter, all such claims shall be barred notwithstanding any statutory period of limitations to the contrary.

**12. GOVERNING LAW; REMEDIES.** The rights and obligations of the parties hereto and the construction and effects of any contract formed pursuant hereto shall be governed by the laws of the State of Ohio. If Buyer fails to fulfill the terms of payment of any invoice or if the financial or business condition or responsibility of Buyer shall become impaired or unsatisfactory to Seller, Seller reserves the right to suspend work on the contract and/or withhold delivery of all or part of the goods subject hereto, without prejudice to any other legal or equitable remedy, until past-due payments are made and satisfactory assurance of payment is received. Seller shall, in addition to the rights and remedies herein set forth, be entitled to all rights and remedies provided for under the Uniform Commercial Code and other applicable law as from time to time amended and at equity. The UN Convention on the International Sale of Goods does not apply to this Contract.

**13. INDEMNIFICATION.** Complete compliance with the appropriate standards applicable for the destination of the goods, by law, rests with Buyer for use of the goods. Buyer shall comply with and require its agents and employees to comply with all directions, safety notices, warnings and other instructions furnished by Seller, and shall use and require its agents and employees to use reasonable care in the installation and/or use of the goods. If Buyer fails to observe the provisions of this section, or if any injury or damage is caused, in whole or in part, by Buyer's failure to comply with applicable federal, state or local safety requirements, Seller shall have no obligation to Buyer or any other person in respect thereof, and Buyer shall indemnify, defend and hold Seller harmless against any claims, loss or expense for injury or damage arising directly from any such failure. Seller specifically disclaims any and all liability arising out of the use of the goods supplied hereunder. Buyer further agrees to indemnify, defend and hold harmless Seller from and against any and all claims for relief, rights or causes of action whatsoever arising from or relating to damages or personal injuries to an employee of Buyer. To the extent necessary to give full and complete effect to this agreement to indemnify, Buyer, for itself and for its agents, successors and assigns, specifically and expressly waives whatever immunity from liability it might be afforded by constitutional provisions, statutes and common law principles currently recognized or that may from time to time be recognized throughout the United States with respect to workers' compensation.

**14. CHANGES.** Prices are subject to adjustment if Buyer requests changes in specifications, quantities or delivery requirements, provided that changes in the goods to be purchased, or any other terms of this order, may be made only upon Buyer's written order and the agreement, in writing, of Seller. All of the terms and conditions of this invoice shall apply to goods to which such changes are made, and no modification in the terms and conditions hereof shall be binding on Seller unless contained in writing signed by an officer of Seller and expressly stating both that such terms are being modified and the nature of such modification.

**15. DISCLAIMER/LIMITATION OF LIABILITY. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, NOR ANY AFFIRMATION OF FACT OR PROMISE IS MADE BY SELLER WITH RESPECT TO THE GOODS WHICH ARE SOLD PURSUANT HERETO. SELLER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL LOSSES, DAMAGES OR EXPENSES, DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING OR USE OF THE GOODS, OR FROM ANY OTHER CAUSE RELATING THERETO, AND SELLER'S LIABILITY HEREUNDER IN ANY CASE IS EXPRESSLY LIMITED TO THE REPLACEMENT (IN THE FORM ORIGINALLY SHIPPED) OF GOODS NOT COMPLYING WITH THIS AGREEMENT OR, AT SELLER'S ELECTION, TO CREDITING BUYER WITH AN AMOUNT EQUAL TO THE PURCHASE PRICE OF SUCH GOODS, WHETHER SUCH CLAIMS ARE FOR BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR PENALTIES OF ANY DESCRIPTION.**