



Terms and Conditions

1. **Definitions:**

"Buyer" means the person or company purchasing Spellman's Products.

"Products" means Spellman's goods and/or services referred to in the Purchase Order.

"Purchase Order" means Buyer's Product requirements specified in Buyer's order, whether made orally, by electronic means, or by written purchase order.

2. **Confirmation and Acceptance:** These Terms and Conditions of Sale shall be deemed an integral part of the Purchase Order and, unless there is a separate written agreement between Buyer and Spellman with respect to the transaction set forth in the Purchase Order, these Terms and Conditions and the Purchase Order constitute the agreement between Buyer and Spellman for the sale and purchase of the Products. These Terms and Conditions shall be deemed accepted by Buyer and Spellman upon acknowledgement thereof or commencement of performance. No modification or waiver of these Terms and Conditions shall be effective unless set forth in writing signed by Buyer and Spellman.

3. **Delivery:** All prices, title and risk of loss are F.O.B. shipping point. Unless otherwise agreed, Products shall be delivered in Spellman's standard packaging. Agreed delivery dates, subject to applicable manufacturing lead times, shall be adhered to in good faith by Spellman, but time shall not be deemed of the essence. On written notice to Spellman, Buyer may reschedule quantities of Products for delivery subject to Buyer's agreement to compensate Spellman for its reasonable costs incurred as a result of the rescheduling. Cancellation of any order is subject to Buyer's agreement to compensate Spellman for (a) payments required to be made by Spellman to its suppliers as a result of such cancellation, (b) the selling price of finished goods, and (c) 120% of the cost of inventories allocated to the order. Costs incurred by Spellman after the effective date of Buyer's cancellation shall be the sole responsibility of Spellman. Buyer grants Spellman a first security interest in the Products and their proceeds until payment in full in accordance with these Terms and Conditions.

4. **Delays:** Neither Buyer nor Spellman shall be liable for failure to perform or deliver by reason of causes beyond its control and without its fault or negligence.

5. **Prices and Payment:** Quoted prices are valid for 30 days from the date of quotation, or, if there is no written quotation, prices are those in effect at the time of acceptance of the order for the Products. Published prices are subject to change without notice. When the price has been discounted in consideration of Buyer's forecasted purchase of a minimum quantity of Products, and Buyer purchases less than the minimum quantity required to qualify for that discounted price, the price shall be retroactively increased to the price quoted for the quantity actually purchased. Unless otherwise agreed in writing between Buyer and Seller, and subject to Spellman's approval of Buyer's credit, payment terms are net 30 days from shipment. Late payments are subject to a finance charge of 2% per month. Prices do not include governmental taxes which shall be listed separately on Spellman's invoices and shall be paid by Buyer. Valid tax exemption certificates or other evidence of tax exemption furnished to Spellman by Buyer shall be accepted by Spellman in lieu of such taxes.

6. **Warranty:** Spellman warrants that all power supplies it manufactures will be free from defects in materials and factory workmanship, and agrees to repair or replace, without charge, any power supply that under normal use, operating conditions and maintenance reveals during the warranty period a defect in materials or factory workmanship. The warranty period is twelve (12) months from the date of shipment of the power supply. With respect to standard SL power supplies (not customized and assigned a separate X number) the warranty period is thirty-six (36) months from the date of shipment of the power supply.

This warranty does not apply to any power supply that has been:

- Disassembled, altered, tampered, repaired or worked on by persons unauthorized by Spellman
- subjected to misuse, negligent handling, or accident not caused by the power supply
- installed, connected, adjusted, or used other than in accordance with the original intended application and/or instructions furnished by Spellman.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

The buyer's sole remedy for a claimed breach of this warranty, and Spellman's sole liability is limited, at Spellman's discretion, to a refund of the purchase price or the repair or replacement of the power supply at Spellman's cost. The buyer will be responsible for shipping charges to and from Spellman's plant. The buyer will not be entitled to make claim for, or recover, any anticipatory profits, or incidental, special or consequential damages resulting from, or in any way relating to, an alleged breach of this warranty. No modification, amendment, supplement, addition, or other variation of this warranty will be binding unless it is set forth in a written instrument signed by an authorized officer of Spellman.

7. **Confidentiality:** (a) Scope. All data, drawings, materials, prototypes, designs, processes, procedures, formulae, improvements, financial data, marketing information, scientific data, technical information, engineering data, manufacturing specifications, know-how, and other trade secrets or confidential information which has been treated by Spellman or Buyer, or

USA

EUROPE

JAPAN

MEXICO

CHINA



both, as confidential relating exclusively to the Products ("Confidential Data"), shall not be disclosed to any third party (i.e. one not involved in the design or production of the Products) without the express written consent of an officer of the party supplying such information; and all information disclosed to either party and all other information to which either party may have access by virtue of such disclosure shall be presumed by the parties to be Confidential Data, unless the party disclosing such information shall advise the recipient thereof that any item(s) thereof need not be regarded or treated as confidential. The obligation to maintain the confidentiality of any Confidential Data shall endure permanently. The parties shall return any Confidential Data, and all copies thereof, to the disclosing party within 7 days after any request that any such information be returned.

(b) Exclusions. Confidential Data shall not include (i) information which is in possession of the recipient at the time it is received from the disclosing party, where possession of such information can be established from documentation generated prior to the disclosure of such information, or (ii) information in the public domain through no act or omission of either party, or (iii) information lawfully received from others who are not in breach of any confidentiality agreement with either of the parties, or (iv) information independently developed by the recipient, or (v) information which is required to be disclosed to a court of competent jurisdiction or to a governmental agency, provided the party subject to such disclosure order gives the other party prompt written notice of same and cooperates with the other party's efforts, if any, to obtain a protective order.

(c) Remedies. Buyer and Spellman acknowledge that the use or disclosure of any Confidential Data without the prior written consent of an officer of the disclosing party shall be a breach of this section and an unauthorized disclosure of trade secrets, and the party in breach shall be liable to the other party for compensation of all damages (other than consequential damages) arising out of or resulting from such breach, including attorneys' fees and court costs, if any; and it is acknowledged that the non-breaching party may suffer irreparable harm as a result of the breach and that equitable relief, such as an injunction, will be appropriate in such case for any breach or threatened breach.

(d) License. Spellman grants Buyer a paid-up, non-exclusive, world-wide right and license to use Spellman's Confidential Data solely for the purpose of marketing the Products. Spellman retains its right to utilize its Confidential Data to manufacture and market power supplies.

8. **Mutual Indemnities:** Each party ("Indemnitor") agrees to defend any claim, suit, action or proceeding ("Claim") threatened or brought against the other party or the other party's parent, subsidiaries, affiliates, shareholders, directors, officers, employees, agents, distributors, suppliers or customers ("Indemnitees") insofar as any such Claim is based on a claim that any Product, or any component thereof, manufactured or distributed in accordance with the Indemnitor's design or specifications constitutes infringement of any patent, copyright, trademark, trade secret, or other property right, and the Indemnitor shall indemnify the Indemnitees for all royalties, damages, judgments, losses, liabilities, costs and expenses (including attorneys' fees) finally awarded against or incurred by any Indemnitee. Spellman shall have no liability under this section to the extent that the Claim is based upon (i) the use of the Product in combination with products or devices not furnished by Spellman, or (ii) the Product as altered or modified by someone other than Spellman without the prior written consent of Spellman.

9. **Miscellaneous:** (a) The terms and provisions hereof shall bind and benefit the successors and assigns of Spellman and Buyer.

(b) Neither party shall be or hold itself out to be a partner or joint venturer with the other party as a result of the transaction referred to herein, and no third party is intended to or shall have any rights hereunder.

(c) These Terms and Conditions of Sale may not be modified, amended, or supplemented, nor may any provision hereof be waived, except by a writing signed by the party to be bound thereby.

(d) The failure of either party at any time to require performance by the other party of its obligations hereunder shall not affect the right to require such performance at any time thereafter; and the waiver by either party of any remedy with respect to a breach of any provision hereof shall not constitute a waiver of a remedy with respect to any succeeding breach or any breach of any other provision.

(e) If any provision hereof is held invalid or unenforceable, such impediment shall attach only to such provision and shall not render invalid or unenforceable any other provision hereunder.

(f) These Terms and Conditions of Sale and their validity, construction and performance shall be governed in all respects by the laws of the State of New York. The parties consent and submit to the exclusive jurisdiction of any New York or Federal court sitting in the City and County of New York in any action or proceeding arising out of or relating hereto or the enforcement hereof; and the parties consent that process in any such action or proceeding may be served by registered or certified mail, which service shall be sufficient to confer personal jurisdiction over the party so served.