

Terms and Conditions of Sale

These Terms and Conditions of Sale are part of the Customer Order Form that “you” (the Customer named on the front of the form) submit to Melco International LLC (“Melco”).

1. **Order and Acceptance.** Your order on this Customer Order Form represents an offer to purchase at the prices and quantities described on the form. If and when your offer is accepted by Melco, the Customer Order Form including these Terms and Conditions of Sale will become a binding agreement between Melco and you. Melco may accept or reject any order in its sole discretion. Melco may accept your order by returning a countersigned copy to you, or by shipping some or all of the ordered goods to you, whichever comes first. Upon acceptance by Melco, your order becomes irrevocable, and you may not cancel, change or reduce your order, nor may you suspend deliveries, unless you have first obtained Melco’s written consent. Faxed signatures on this Customer Order Form are valid and binding.
2. **Shipment.** Unless otherwise agreed in writing by Melco, you are responsible for all freight, insurance and incidental charges. Title and all risk of loss passes to you upon delivery to the carrier at Melco’s facility, even if Melco agrees to pay freight charges. Melco will ship Products according to Melco’s standard shipping procedure unless you make other arrangements in advance. If you specify shipping arrangements, you are encouraged to obtain insurance. If you do not specify shipping arrangements, Melco may obtain and bill you for insurance, but has no obligation to do so. The amount of any tax or other government charge on the sale, shipment or use of goods ordered is your sole responsibility. Melco’s failure to add any applicable sales tax to your bill does not release you from sole responsibility for the payment of such tax.
3. **Delivery.** Deliveries will be made in accordance with Melco’s production schedule. Delay in the delivery of any goods shall not relieve you of your obligation to accept and pay for the goods you ordered. Melco will endeavor to meet your requested delivery dates, but delivery dates are estimated and may vary based upon a multitude of factors. Melco shall be excused for any delay in performance due to causes beyond its direct control, such as strikes, lockouts, fires, national emergency, inability to obtain parts or materials, delays of carriers or suppliers, and governmental acts.
4. **Payment.** Melco’s published or quoted prices are subject to change without notice. Unless otherwise agreed in writing by Melco, terms are cash in advance. Even if Melco agrees to terms other than cash in advance, Melco may decline to deliver except for cash, or stop goods in transit, whenever any reasonable doubt as to your financial responsibility develops. If you are responsible for any delay in shipment, Melco may treat the date of availability of goods as the date of shipment for purposes of payment. If payment is not made in advance, you agree to pay a late fee of 1.5% per month on any amount not paid when due (or the maximum interest rate permitted by law, whichever is lower), plus costs of collection. Acceptance of late or partial payments (even if marked with "paid in full" or similar words) will not waive Melco’s rights. Melco may charge an additional fee for any payment that is not completed using standard methods of payment processing. If Melco agrees to terms other than cash in advance, Melco reserves a purchase money security interest in the goods ordered until full payment is received. For that purpose, this Customer Order Form is a security agreement. By signing this Customer Order Form, you authorize Melco or its agent to file any necessary financing statements to perfect Melco’s security interest. You agree that, if you have financed your acquisition of the goods, this Customer Order Form supersedes any financing agreement to the extent necessary to ensure that this Customer Order Form is fully enforceable as written.
5. **Warranty and Returns.** The equipment ordered on this Customer Order Form is warranted as described in Melco’s limited warranty, a copy of which is attached. You agree that no other warranty applies. Returned goods will be accepted only if you have complied with Melco’s Product Return Policy and obtained a Return Material Authorization number from Melco. Melco may charge a re-stocking fee and/or a test fee, as outlined in the Product Return Policy published on Melco’s website at www.melcousa.com, for the goods returned. Fees will not apply if the goods are determined by Melco to be defective. If you rightfully return any goods, your sole remedy is refund of any payments made for the goods upon return to Melco in the same condition as when received, less any fees if applicable and as outlined in the Product Return Policy.
6. **Software.** Melco products contain software and related documentation (“Software”). All Software is subject to the License Agreement for Melco Software presented on screen to the user upon installation (“License Agreement”). Whether you install the equipment or have the equipment installed on your behalf by a Melco technician, you agree that any Software provided pursuant to this Customer Order Form is subject to the terms of the applicable License Agreement. Melco’s sole warranties for the Software are contained in the License Agreement.
7. **Mandatory Arbitration.** YOU AGREE TO MANDATORY ARBITRATION OF ANY DISPUTE BETWEEN US. Unless otherwise agreed, any dispute related to this Customer Order Form or the ordered goods shall be resolved by binding arbitration in Denver, Colorado, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall be conducted by a single arbitrator acceptable to both parties. If the parties do not agree on an arbitrator within ten days after a demand for arbitration is made, the arbitrator shall be selected by the Judicial Arbitrator Group.



The arbitration shall be limited solely to the controversy between you and Melco. The arbitration award shall be final and binding, and the arbitrator shall be empowered to award such interim and injunctive relief as may be necessary to safeguard the property or rights that are the subject matter of the arbitration. The arbitrator’s award may be immediately and specifically enforced by any court having jurisdiction. Either party may apply to a court having jurisdiction for interim relief pending commencement of the arbitration. The provisions of this section shall survive termination of this Customer Order Form.

8. **Repossession.** If you have not made payment when due, Melco may take collection action, repossess the goods, seek a judgment of possession, or initiate legal proceedings for replevin, without the necessity of arbitration. However, any claim for damages relating to such repossession or the goods repossessed, whether such claim is asserted by Melco or by you, shall be subject to mandatory arbitration as described in the preceding section.

9. **Limitation of Remedies.** YOU AGREE TO THE LIMITATION OF REMEDIES DESCRIBED IN THIS SECTION, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, LOST DATA OR LOSS OF GOODWILL), EVEN IF THAT PARTY IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL MELCO’S LIABILITY FOR ANY CLAIM EXCEED THE PURCHASE PRICE OF THE SPECIFIC GOODS AS TO WHICH A CLAIM IS MADE. BOTH PARTIES HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY. YOU ASSUME ALL RISK AND LIABILITY FOR LOSS, DAMAGES OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF YOUR USE OR POSSESSION OF ANY GOODS SOLD HEREUNDER. With the exception of actions initiated by Melco to collect payment, enforce its security interest, or protect Melco’s proprietary information, no arbitration proceeding or legal action related to this Customer Order Form or the ordered goods may be brought by either party more than one year after the cause of action arises, is discovered, or should have been discovered with the exercise of reasonable diligence. The provisions of this section shall survive termination of this Customer Order Form.

10. **Governing Law, Forum, Legal Expenses.** This Customer Order Form is governed by the laws of the State of Colorado. Any dispute submitted to a court shall be litigated in the federal or state courts located in Denver, Colorado, and the parties hereby agree to jurisdiction and venue in those courts. The prevailing party in any litigation or arbitration shall be entitled to recover all reasonable costs of enforcing its rights under this Customer Order Form, including attorney’s fees and expenses.

11. **General.** Upon acceptance by Melco, this Customer Order Form shall constitute the entire agreement between the parties with respect to the goods ordered hereby, and shall supersede all prior or contemporaneous discussions, whether oral or written. Amendments to this Customer Order Form may only be made by a writing signed by both parties. Any failure or delay in exercising any right or remedy shall not constitute a waiver of that right. If any provision of this Customer Order Form is found to be invalid or unenforceable, the remaining provisions shall not be affected. The authority construing this Customer Order Form may modify the affected provision to the minimum extent necessary to be valid and enforceable, or may strike the affected provision and enforce this Customer Order Form as if that provision were not included. You may not assign this Customer Order Form without Melco’s prior written consent. Subject to the preceding sentence, this Customer Order Form shall be binding upon the assigns and successors in interest of Melco and you. Notices under this Customer Order Form shall be in writing and shall be effective when received by certified mail or overnight courier to the address shown on the face of the Customer Order Form (for you the “sold to” address, for Melco attention: Office of the President). Refusal to accept delivery shall be deemed receipt.

You acknowledge that (a) you have read and understand the Customer Order Form including these Terms and Conditions, (b) you have had the opportunity to consult with legal counsel of your choice, and (c) you knowingly and voluntarily accept the Customer Order Form including these Terms and Conditions.

CUSTOMER

X _____

Date: _____

Title (if any): _____