



# The Barden Corporation

A Member of the Schaeffler Group

## THE BARDEN CORPORATION TERMS AND CONDITIONS OF SALE

**Prices.** Buyer's order is being entered at price(s) shown on the front shown on The Barden Corporation's ("Barden") quotation, or as agreed to by the parties, but Barden reserves the right to bill the goods at the prices in effect at the time of shipment

**Payment and Security Terms.** Buyer agrees to pay all invoices issued within thirty (30) days from the date of invoice. Barden reserves the right to change such terms at any time, either for the class of trade generally or, with cause, for Buyer alone. Barden shall have the right at any time to demand cash payment on or before shipment in any instance in which Barden determines that Buyer's credit is less than satisfactory, or for other good cause.

Buyer hereby grants and Barden reserves a purchase money security interest in the goods purchased under this order, and in any proceeds of the goods, for the amount of the purchase price. Upon Barden's request, Buyer shall sign any document required to perfect such security interest. Buyer's full payment of the purchase price of the goods purchased under this order shall release Barden's security interest.

**Shipment Terms.** Shipment is F.O.B. shipping point and includes no cartage, insurance charges, or taxes, unless Barden decides, in its sole discretion, to use its own transportation equipment.

**Risk of Loss.** The risk of loss of the goods shall pass to Buyer upon loading of the goods into transportation equipment at the shipping point unless transportation is provided by Barden's equipment.

**Shipment Dates.** Barden's obligation to ship on time is expressly made subject to the terms of the force majeure clause set forth below. Barden shall make every reasonable effort to meet any delivery date(s) requested by Buyer, but Barden will not be liable for its failure to meet such date(s).

**Installments.** Barden shall have the option to deliver the goods in two (2) or more installments.

**Cancellation.** In the event Buyer desires to cancel an order accepted by Barden, Buyer shall provide a written explanation to Barden, and the terms of cancellation shall then be subject to negotiation. However, Barden in no event waives any remedies available to it under applicable law.

**Intellectual Property.** Barden reserves the right to discontinue shipment of any goods, the manufacture, sale, or use of which in its opinion would involve patent infringement. This Order in no way provides Buyer with any license, express or implied, to practice or use any intellectual property rights, whether patented inventions, trademarks, trade secrets, copyrights or discoveries owned by Barden. Barden agrees to hold harmless and protect Buyer against all loss or damages in lawsuits arising from actual or alleged patent infringement by Barden's products, alone, with modification or combination with other goods, providing Buyer promptly notifies Barden in writing of any such claim and gives Barden sole control of the defense of the claim and all related settlement negotiation.

**Special Orders.** In the case of orders for non-catalog goods, Buyer agrees to accept ten (10) percent more or less than the amount ordered.

**Limited Warranty.** Barden warrants only that the goods offered under this Order will conform to Barden's published specifications and will be free from defects in material or workmanship. If Buyer is purchasing non-catalog goods, Barden warrants only that the goods will conform to the specifications mutually approved by the parties for the specific applications disclosed to Barden and will be free from defects in material and workmanship. There are no other express warranties other than those contained in this Order, and all representations or affirmations were made for illustrative purposes only.

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**Barden makes no warranty of merchantability of the goods sold, and Barden makes no warranty that the goods sold are fit for any particular purpose.**

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**Acceptance, Rejection and Revocation.** Goods shall be deemed to have been accepted and Buyer's right to reject nonconforming goods shall expire five (5) business days after delivery of the goods. Buyer's right to revoke acceptance of nonconforming goods shall expire ninety (90) days after delivery of the goods. If Buyer rejects or revokes acceptance of any goods tendered under this Order, or attempts to do so, Buyer must notify Barden in writing fully specifying all claimed nonconformities. The failure to specify any nonconformity shall constitute a waiver of that alleged nonconformity. No returns may be made and no credits will be granted without Barden's prior written approval.



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**Notice of Breach of Warranty.** After Buyer has accepted the goods and Buyer's right to revoke acceptance has expired, if Buyer discovers that the goods breach any warranty, Buyer must notify Barden in writing of the breach of warranty with seven (7) days after discovery of the breach. The notice must specify the facts constituting the alleged breach and must be sent by certified mail to Barden's address. Barden shall have a reasonable opportunity to investigate any alleged breach of warranty before Barden has any obligation to take any remedial actions.

**Remedies of Buyer.** Buyer's exclusive remedy, and Barden's liability, for shipment of nonconforming goods or any breach of warranty are expressly limited, at Barden's option, to either replacement of the nonconforming goods at the F.O.B. shipping point, or refund of the purchase price. Further, all defective or nonconforming goods must be returned to Barden, charges prepaid, and with complete information as to service and maintenance. Barden shall have no responsibility for goods which have been improperly maintained or subjected to abuse in operation or assembly. Barden shall not be responsible for any corrosion if Buyer has not taken reasonable steps to prevent corrosion from occurring.

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**Limitation of Liability:** The remedies of Buyer set forth in these terms and conditions of sale are exclusive. Buyer assumes risk and liability resulting from the use of the goods, whether used singly or in combination with other goods. Barden shall not in any case be liable for special, incidental or consequential damages arising from breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory. Such damages include, but are not limited to, loss of profits or revenue, loss of use of the goods, cost of capital, cost of any substitute goods, facilities or services, cost of any recall, or claims of customers or employees of Buyer for any such damages.

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**Force Majeure and Allocation.** Neither Buyer nor Barden will be responsible for any delay or failure of performance (other than to make payments due hereunder) if such delay or nonperformance is caused by acts of God, floods, fires, explosions, storms, transportation difficulties, strikes, lockouts, or other labor or industrial disturbances or any law, rule order or action of any court, agency or other instrumentality of the federal or any state local government, or the exhaustion, reduction, unavailability, or delay in delivery of any product or raw material necessary in the manufacture of the goods to be sold hereunder (regardless of whether or not such exhaustion, reduction, unavailability, or delay is beyond such party's control, provided only that the same is not willfully done or brought about for the purpose of excusing failure or omission to perform or any other cause beyond a party's control). If any of the events or contingencies referred to in this provision occurs, Barden shall have the right to curtail deliveries or allocate its supply of goods for sale among all of its customers in any manner which in its sole discretion is fair and reasonable in the circumstances, and Buyer shall not hold Barden responsible in any manner for losses or damages which Buyer may incur as a result of such failure, curtailment or allocation by Barden. Notwithstanding the foregoing, Barden will make every reasonable effort to procure supplies and raw materials from alternate sources if necessary, and make every effort possible to meet and fill the orders of Buyer.

**Waiver.** A waiver of and/or failure to perform any one or more of these terms and conditions shall not constitute a waiver of or any excuse for nonperformance as to any other part of this or any other order.

**Statute of Limitations.** Any action for breach of these terms and conditions (including any breach of warranty) must be commenced within thirteen (13) months following delivery of the goods.

**Sole Agreement.** These terms and conditions contain the entire agreement between the parties with respect to the goods. The agents, employees and representative of Barden are not authorized to make modifications to this Order, or to make additional warranties binding on Barden. Any such additional statements, whether oral or written, do not constitute warranties and should not be relied upon by the Buyer. Additional or differing terms and conditions proposed by Buyer or included in the Buyer's purchase order or other similar document are objected to and rejected by Barden and have no effect unless expressly accepted in writing by Barden. BUYER AGREES THAT THIS PURCHASE IS NOT MADE IN RELIANCE UPON ANY REPRESENTATIONS OR WARRANTIES EXCEPT THOSE HEREIN CONTAINED.

**Confidentiality.** Buyer will keep confidential all information, drawings, specifications, or data furnished by Barden, or prepared by Buyer specifically in connection with the performance of the Order, and will not divulge or use such information, drawings, specifications or data for the benefit of any other party. Buyer will not use, either directly or indirectly, any such data or any information derived therefrom for any purpose other than to perform the Order without obtaining Barden's written consent. Buyer will return all information, drawings, specifications, or data of Barden upon Barden's request. The provisions of this section are cumulative of and in addition to the provisions of any confidentiality and non-disclosure agreement between the parties.



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**Compliance With Applicable Laws.** Barden shall comply with all federal, state and local laws and regulations applicable to its performance of its obligations in this transaction.

Buyer shall comply strictly with all applicable U.S. export laws and regulations, including the Arms Export Control Act, the International Traffic in Arms Regulations (ITAR), and the Export Administration Regulations (EAR). Upon request, Buyer shall assist Barden in documenting compliance with those laws, regulations and executive orders.

Buyer represents that it is not on the U.S. Government's Denied Parties List, or the Debarred List, and are not otherwise subject to any U.S. or other government sanction or restriction that would prohibit the sale or export by Barden of the goods that are the subject of the Agreement. Upon request, Buyer shall provide all necessary end-user and end-use information of which it is aware or which it could obtain with commercially reasonable efforts.

If Buyer is purchasing the goods pursuant to a government contract or sub-contract, Buyer shall promptly notify Barden of that fact and of any proposed contractual terms from the government procurement laws and regulations. Barden will not be bound by any government procurement provisions unless such provisions are agreed to in a writing signed by an authorized representative of Barden.

Any Order shall be construed in accordance with and exclusively governed by the laws of the State of Connecticut without regard to conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Order.