

SCHOTT Gemtron Food Display

WARRANTIES AND GENERAL TERMS AND CONDITIONS

1. CONDITIONAL ACCEPTANCE OF ORDER: SCHOTT Gemtron Corporation's ("SCHOTT Gemtron") acceptance of customer's order and therefore, the formation of a valid contract for sale, is EXPRESSLY CONDITIONED on Customer's acceptance of the general terms and conditions as set forth herein and any additional terms and conditions indicated on the face of SCHOTT Gemtron's Conditional Acceptance of Order or quotation. Customer will be deemed to have accepted these general terms and conditions and any general terms and conditions indicated on the face of SCHOTT Gemtron's Conditional Acceptance of Order or quotation unless customer shall object thereto in writing within five days from receipt of SCHOTT Gemtron's Conditional Acceptance of Order or quotation or upon acceptance of all or any parts of the goods ordered, whichever occurs first.

2. ADDITIONAL TERMS AND CONDITIONS: The terms and conditions as set forth on SCHOTT Gemtron's Conditional Acceptance of Order, quotation, or price lists shall be considered additional terms and conditions of this sale. SCHOTT Gemtron and the purchaser acknowledge that all of the terms and conditions applicable to this sale reflect an acceptable allocation of the rights and obligations of the parties to this sale.

3. SHIPMENT OF GOODS / RETURN OF GOODS: Every effort will be made to ship the goods on the scheduled shipment date and to maintain production schedules consistent therewith. SCHOTT Gemtron will not be liable, however, for any claims arising from the failure to meet any scheduled shipping dates. If Buyer refuses shipment of any standard catalog products under an acknowledged order and those products are consistent with that order and are not delivered damaged or defective, then Buyer will be responsible for:

- a. Return shipment of the products to SCHOTT Gemtron in original shipping containers;
- b. Return freight to SCHOTT Gemtron prepaid by Buyer; and
- c. A restocking charge to be determined by SCHOTT Gemtron of not less than twenty-five percent (25%) of the sales price.

Buyer assumes the risk of any return shipment damage or loss, the cost of which will be assessed by SCHOTT Gemtron and added to the restocking charge. No custom products or custom sizes of catalog items may be returned to SCHOTT Gemtron for credit unless those products are not consistent with an acknowledged order or they are defective. If they are defective, SCHOTT Gemtron reserves the right to correct the defect at the ship-to location.

4. TERMS OF CREDIT: All credit terms are net 30 days from date of invoice. Any deductions from the net invoice amount must be approved by an authorized representative of SCHOTT Gemtron. If credit is extended to Buyer, SCHOTT Gemtron reserves the right to revoke such credit if Buyer fails to make timely payment for any goods delivered. SCHOTT Gemtron reserves the right to require payment or other assurances which it deems necessary prior to the shipment of any goods, if, in SCHOTT Gemtron's opinion, exercised in SCHOTT Gemtron's subjective, good faith judgment, the Buyer's financial condition has deteriorated or the risk of non-payment has otherwise increased. Credit is subject to approval upon receipt of completed credit application. Any goods shipped prior to credit approval shall be shipped "Cashiers Check", or pre-payment. A \$75.00 charge will be applied for each returned check. Goods may not be returned for credit unless prior authorization and an authorization number have been granted by SCHOTT Gemtron. A 1-1/2% per month charge will be assessed on past due amounts.

5. LIMIT ON REMEDIES IN EVENT OF FAILURE: In the event any SCHOTT Gemtron product fails to perform as warranted, SCHOTT Gemtron's sole responsibility and **PURCHASER'S SOLE AND EXCLUSIVE REMEDY** under any warranty, contract, negligence or other claim of liability shall be limited to a refund of SCHOTT Gemtron's original selling price or, at SCHOTT Gemtron's option, furnishing the purchaser with another product without charge F.O.B. Madisonville, Kentucky. In no event shall SCHOTT Gemtron be liable for cost incurred in the removal of failed products, the installation of replacement products, **OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED AS NON-PERSONAL INJURY LOSSES.** In the event a product is replaced pursuant to any applicable SCHOTT Gemtron warranty, the replacement product is warranted only for the remainder of the warranty period applicable to the original product. SCHOTT Gemtron shall not be liable for any allegedly defective product unless SCHOTT Gemtron first has the right to inspect such product and verify the defective condition.

6. CLAIMS BY BUYER: All claims by Buyer against SCHOTT Gemtron, including claims for alleged shortages, must be made in writing and delivered to SCHOTT Gemtron within 15 days of receipt of the goods. SCHOTT Gemtron shall thereupon be afforded a reasonable opportunity to inspect the goods. All claims not made in the time period and manner specified above shall be deemed waived.

7. WARRANTY: The following shall be the sole and exclusive warranty for products sold by SCHOTT Gemtron Food Display with the exception of the SCHOTT Gemtron Food Display Limited Warranty (Form No. W1010):

- a. SCHOTT Gemtron warrants to Customer that all Products will conform to and perform in accordance with the applicable current specifications issued by SCHOTT Gemtron.
- b. This warranty shall not apply to any Product that shall have been subject to misuse, abuse, accident, disaster, or which has been used contrary to current instructions.
- c. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY SCHOTT GEMTRON IN CONNECTION WITH THE PRODUCTS, AND SCHOTT GEMTRON DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.**
- d. SCHOTT Gemtron assumes no liability for consequential damages, anticipated or lost profits, incidental damages, loss of time, or other losses incurred by Customer or any third party in connection with the Products.



8. SUITABILITY OF PRODUCTS: Purchaser shall be solely responsible for determining the suitability for use of the products purchased from SCHOTT Gemtron. Representations by employees or agents of SCHOTT Gemtron (other than the warranties specified herein) concerning the suitability of SCHOTT Gemtron's products are not authorized by SCHOTT Gemtron and may not be relied upon by the purchaser.

9. PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES: Except in the particulars specified by purchaser and expressly agreed to in writing by SCHOTT Gemtron, all material shall be produced in accordance with SCHOTT Gemtron's standard practices. All material, including that produced to meet an exact specification, shall be subject to tolerances and variations consistent with usages of the trade and regular factory practices concerning dimension, weight, straightness, section, composition and mechanical properties, normal variations in surface, internal conditions and quality, and deviations from tolerances and variations consistent with practical testing and inspection methods.

10. CHANGES IN ORDER: SCHOTT Gemtron reserves the right to void any quotation for price or terms in the event the customer to whom such quotation is made changes his order with respect to any factor reflected in price or other terms originally ordered or quoted.

11. CHANGES BY SCHOTT GEMTRON: SCHOTT Gemtron reserves the right to change design, colors and specifications of any goods without notice to Buyer.

12. DEFAULT: If Buyer defaults on the purchase of any goods or if a petition in bankruptcy is filed by or against Buyer, SCHOTT Gemtron, in addition to other remedies, may repossess any goods which were previously delivered and for which payment has not been received and may refuse to make further shipment of goods. Buyer agrees to pay SCHOTT Gemtron's costs and expenses of collection or repossession including the maximum attorney's fee permitted by law.

13. WE ASSUME NO RESPONSIBILITY FOR BREAKAGE IN TRANSIT: Breakage on arrival should be noted on Bill of Lading and a claim filed PROMPTLY with carrier.

14. PREVAILING PRICE: Unless specifically indicated otherwise in writing, all orders are deemed to be at the price prevailing at the date of shipment.

15. FINAL ACCEPTANCE OF ORDERS: All orders are subject to final acceptance at SCHOTT Gemtron's office in Madisonville, Kentucky. Conditional acceptance is evidenced by SCHOTT Gemtron's Conditional Acceptance of Order or shipment of the ordered products and final acceptance is effective according to the provisions herein.

16. CHANGE OF TERMS: Prices, terms and conditions of sale are subject to change without notice.

17. PRICE QUOTATIONS: All prices are quoted in U.S. dollars.

18. PAYMENT OF TAXES: Any federal, state or municipal tax imposed by virtue of the sale hereunder shall be added to the invoice and paid by the purchaser without discount.

19. FORCE MAJEURE: Except for the payment of money, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by causes beyond its control ("Force Majeure Conditions"), including, but not limited to, fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes. If any Force Majeure Condition occurs, the party delayed or unable to perform ("Delayed Party") shall give immediate notice to the other party ("Affected Party"), and the Affected Party, upon giving prompt notice to the Delayed Party, shall be excused from performance under this Agreement for the duration of the Force Majeure Condition, provided, however, that the Affected Party shall take all reasonable steps and cooperate with the Delayed Party to avoid or remove the cause of non-performance and shall resume performance hereunder with dispatch when the cause is removed; and provided further that if the Delayed Party cannot within sixty (60) days remove the cause of non-performance, the Affected Party may terminate this Agreement.

20. NON-WAIVER: Waiver by SCHOTT Gemtron of a breach of any of the terms and conditions of this sale shall not be construed as a waiver of any other breach. The mere passage of time shall not constitute a waiver under the terms and provisions of this sale.

21. WAREHOUSING: Prices in our price lists are for quantities ordered for production and shipment at one time. The warehousing charge of 1-1/2% per month will be applied to invoices covering material which has not been picked up or released for shipment within thirty days after notification that the order is ready.

22. CANCELLATIONS: Cancellation of any acknowledged order from SCHOTT Gemtron must be approved in writing by SCHOTT Gemtron Food Display in Madisonville, Kentucky. SCHOTT Gemtron shall be entitled to receive, upon demand, liquidated damages of not less than 10 percent (10%) of the purchase price of the order, plus the cost of all materials and work furnished or done upon time of the cancellation by the purchaser.

23. SEVERABILITY: If any provision of the terms and conditions specified herein shall be deemed invalid or unenforceable, the remaining terms and conditions shall be construed as though such provision does not appear herein and shall be otherwise fully enforceable.

24. MODIFICATION: No distributor, representative, agent or employee has the authority to alter or change any product warranty, either orally or in writing.

For more information please contact

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