

**WEBCORE TECHNOLOGIES, INC**  
**TERMS AND CONDITIONS OF SALE**

1. **Governing Provisions of Contract of Sale.** These Terms and Conditions constitute the sole terms and conditions for the sale of any products by WebCore Technologies, Inc. ("WebCore") to any person who has purchased or agreed to purchase such products from WebCore (the "Purchaser"). These Terms and Conditions, together with any written confirmation or acknowledgement of the sale of such products by WebCore to the Purchaser, constitute the entire contract of sale between WebCore and the Purchaser with respect to such products. No waiver, alteration or modification of any provision of these Terms and Conditions or of any such confirmation or acknowledgement (unless express, specific and contained in a writing signed by a duly authorized officer of WebCore), and no conflicting, different, additional or other terms, conditions or provisions specified by the Purchaser in the Purchaser's purchase order or otherwise, whether oral, typed, written or printed (unless expressly, and specifically consented to in writing by a duly authorized officer of WebCore) shall be effective or binding upon WebCore, even if WebCore has not expressly objected to such terms, conditions or provisions, and regardless of whether such terms, conditions or provisions are specified prior to or subsequent to any confirmation or acknowledgement of the sale of the products by WebCore to the Purchaser. In particular, and without limitation, no such waiver, alteration or modification shall be affected by any receipt, acceptance, acknowledgement or confirmation by WebCore of any purchase order form or other document containing conflicting, different or additional terms, conditions or provisions.
2. **Times of Delivery.** Time of delivery is not of the essence, and any times of delivery agreed to by WebCore are estimates only, which are not binding on WebCore. WebCore will make reasonable best efforts to satisfy Purchaser's requested dates of delivery.
3. **Quantities.** All under shipments or over shipments shall be accepted by the Purchaser. Provided the Purchaser notifies WebCore in writing within five days of the Purchaser's receipt of such under shipment or over shipment, WebCore shall take reasonable corrective action, within a reasonable time, to conform the quantities delivered to the amounts required under the contract of sale. An under shipment or over shipment by ten percent or less of total square footage per shipment shall be deemed full performance by WebCore.
4. **Weights and Measurements.** WebCore's weights and measurements shall govern unless proven by the Purchaser to be in error.
5. **Transportation.** Selection of the carrier and routing of the shipment shall be at Purchaser's option. Transportation charges shall be payable by the Purchaser directly to the carrier, unless otherwise specifically agreed to in writing by WebCore.
6. **Taxes.** Any tax or other government charge upon the production, sale or shipment of material now or hereafter imposed by Federal, State, Municipal governments or other authority and to be in effect within the life of a sales contract, shall be added to the published price and shall be paid by the purchaser, unless the purchaser has supplied documentation evidencing exemption from said taxes.
7. **Risk of Loss.** Risk of loss with respect to the products shall pass to the Purchaser upon WebCore's delivery to the carrier at the shipping point, notwithstanding any terms of sale.
8. **Non-Delivery or Delay.** WebCore shall not be responsible or liable for any delay or failure to deliver any product, if caused by any event in the nature of force majeure, such as, but not limited to, war, riots, civil disturbances, strikes, lockouts, other labor troubles, fires, flood, droughts, storms, marine perils, Acts of God, restraints affecting shipping or credit, accidents, governmental action, inability to secure materials, supplies or labor, or any other event, cause or circumstance which makes impracticable the production, transportation or delivery of the products or any material used in or in connection with the production of the products or beyond WebCore's control, and all orders are accepted by WebCore subject to this condition.
9. **Product Suitability and Characteristics.** The Purchaser assumes sole and full responsibility for testing and being familiar with all characteristics of the products and for determining and satisfying itself as to the content of the products and the suitability of the products for the uses and applications contemplated by the Purchaser and others, as well as for complying with all laws, regulations and standards applicable to the possession, handling, processing and use of the products. The Purchaser also assumes all risks and liabilities arising out of or in combination with other material, including without limitation, all risks and liabilities with respect to patent and proprietary rights of third parties. No suggestion or information made or provided by WebCore, whether orally or in writing, concerning the products, or any use or application of the products, constitutes a warranty or representation with respect to the products or as to the results which may be obtained from, or the consequences of the use or application of, the product or of such suggestion or information. In no event is any such suggestion or information to be considered or represented to be a recommendation or a final or preliminary engineering or other design.

10. **Indemnity.** The Purchaser will indemnify and save and hold WebCore free and harmless of and from and, upon WebCore's written request, defend WebCore against, any and all claims, demands, liabilities, suits, actions, legal proceedings, damages, costs and expenses, including attorneys' fees, incident to or arising out of or in connection with the possession, handling, processing or use of the products by the Purchaser or others, including, but not limited to, those related to injury or death of the Purchaser's employees or others. WebCore may participate in any such defense to such extent as WebCore, in its sole discretion, may determine.
11. **Warranties.** WebCore warrants that all products sold by WebCore will meet WebCore's manufacturing specifications for such products applicable at the time of their production. If WebCore determines that any product sold by WebCore to the Purchaser does not conform to such specifications, WebCore will, at its option, either replace such product or refund the amount paid by the Purchaser for such product, following the return of the product to WebCore. This is the Purchaser's sole and exclusive remedy for claims relating to or arising with respect to such product. No product may be returned by the Purchaser without WebCore's prior written approval. EXCEPT FOR THIS WARRANTY, WEBCORE MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT SUPPLIED BY WEBCORE, INCLUDING, BUT NOT BY WAY OF LIMITATION, THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF SUCH PRODUCT.
12. **Claims Period.** All claims with respect to the quantities delivered must be made by the Purchaser in writing within five days after delivery of the products to the Purchaser. All claims for non-delivery of any product must be made within five days after the scheduled delivery date for such product. All other claims with respect to any product, including, without limitation any claim of defect or non-conformity, must be made by Purchaser in writing within ten days after the delivery of such product. All claims must be accompanied by a certificate of inspection and a copy of the notification of claim to the carrier involved. Products with respect to which any claim has been made must be held intact by the Purchaser for WebCore's inspection. The Purchaser's failure to adhere to any of the foregoing conditions, or to give WebCore written notice of any claim within the applicable time period, shall constitute an absolute and unconditional waiver of such claim.
13. **Limitation of Liability.** In no event shall WebCore be liable with respect to any claim of any kind, whether as to any delivered product, or for non-delivery of any product, or arising out of relating to the sale, use, quality, condition, delivery or non-delivery of any product, and whether based on contract, breach of warranty, negligence, tort or otherwise, in an amount greater than the purchase price of the product with respect to which the claim is made. Moreover, WebCore shall, in no event be liable for any special, incidental or consequential damages. Any action brought by the Purchaser must be instituted within two years of the date of the Purchaser's purchase order.
14. **Waiver.** No waiver by WebCore of any breach of any term or condition shall be construed as a waiver of any subsequent breach of the same or any other term or condition. Nothing contained in WebCore's Order Acknowledgement or these Terms and Conditions shall limit the remedies of WebCore in the event of any breach by the Purchaser.
15. **Governing Law and Jurisdiction.** All contracts between WebCore and the Purchaser shall be governed by and interpreted in accordance with the Uniform Commercial Code and the law of the State of Ohio, without reference to Ohio's conflict of laws principles, to the exclusion of the laws of any other state or nation and of the Vienna Convention on Contracts for the International Sale of Goods. For all litigation of disputes or controversies which may arise between the Purchaser and WebCore, both the Purchaser and WebCore consent to the exclusive jurisdiction of the courts of the State of Ohio and the United States District Court for the District of Ohio, and agree that any and all such disputes and controversies shall be determined exclusively by one of such courts, except that WebCore, at its election, may also commence and prosecute such litigations in any jurisdiction in which the Purchaser does or transacts any business or the Purchaser or any of the products may be located or found.