

FLEX-TRAX, INC TERMS AND CONDITIONS OF SALE

1. Governing Provisions. All sales by Flex-Trax, Inc. ("Seller") are made subject to terms and conditions of sale. Seller objects to any additional or different terms will be of any force or effect, and buyer's placement of any order for goods to be provided by Seller constitutes buyer unconditional acceptance of the following terms as the entire agreement between buyer and Seller with respect to the purchase and sale of such goods. THE FOLLOWING TERMS AND CONDITIONS, AND ANY CONTRACT FOR THE SALE OF GOODS BY SELLER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE. WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS.
2. Prices. All prices are subject to change without notice, and the price of products on order but unshipped may be adjusted to the price in effect at the time of shipment.
3. Cancellation. Returns. No order may be cancelled or altered by the buyer except upon terms and conditions acceptable to Seller as evidenced by Seller written consent. NO products ordered may be returned without Seller's written permission and in compliance with the terms of any such permission.
4. Clerical Errors. Seller reserves the right to correct all clerical errors in any quotation, order acknowledgement or invoice.
5. Delivery and Delay. Shortages. All quoted delivery dates and/or periods are approximate. Delivery periods shall commence when buyer shall have provided complete specifications and/or applicable documents required to effect shipment. Title and risk of loss or damage in transit shall pass to buyer upon delivery of products to carrier at Seller's premises. Seller reserves the right to make delivery in installments, and all such installments, when separately invoiced, shall be paid when due, without regard to subsequent deliveries. Delay in delivery of any installments shall not relieve buyer of its obligations to accept remaining deliveries. Seller shall not be liable for any damage as a result to any delay due to any cause beyond Seller's reasonable control, including but not limited to any act of God, act of buyer, embargo or any governmental act, strike, slowdown, war, riot, shortage, delay in transportation, or delayed delivery by suppliers. In the event of any such delay, the time for deliver shall be extended for a period equals to the time lost by reason of the delay. Claims for shortages or other errors must be made in writing to the Seller within five (5) days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by buyer.
6. Shortage. If Buyer requests that shipment of products be delayed for a period of more than fifteen (15) days, Seller may store such products at the buyer's risk in a warehouse or yard or upon submission of invoices therefor.
7. Payment. Unless otherwise provided on the face of this form, payment is due on delivery.
8. Taxes. Buyer shall bear cost of all import duties, manufacturer's tax, retailer's occupation tax, use tax, sales tax, value added tax, duty of charge of any nature whatsoever imposed on a measured by the transaction between Seller and buyer in addition to the prices quoted or invoiced, and in the event Seller is required to pay any such tax, duty, or charge, buyer shall immediately reimburse Seller the amount so paid.
9. Warranties. Products purchased from Seller may be manufactured by third parties, which may or may not provide warranty to the purchasers of their products. Seller agrees, upon request by buyer to assign to buyer any and all such warranties, without recourse. Seller warrants that all products manufactured by Seller and supplied hereunder will conform to specifications and drawings provided by Seller prior to the date of the order. And such goods will be manufactured and inspected in accordance with the generally accepted practices of companies in the business of manufacturing an advanced traction system. Seller warrants that all products manufactured by it and supplied hereunder shall be free from defects in materials and workmanship for a period of thirty (30) days from the date of shipment. If within such period, any such product shall be provided to Seller satisfaction to be defective, such product shall be repaired or replaced at Seller's option. Such repair or replacement shall be Seller's sole obligation and buyer's exclusive remedy hereunder and shall be conditioned upon Seller receiving written notice of any alleged defect within ten (10) days after its discovery and at Seller's option, return of such products to Seller F.O.B. its factory.

EXCEPT FOR THE WARRANTIES SET FORTH IN THIS PARAGRAPH 9, SELLER SHALL HAVE NO OTHER OBLIGATIONS OR LIABILITY TO BUYER UNDER, AND HEREBY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTY OF ANY PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

Any description of the product, whether in writing or made orally by Seller or Seller's agent, are the sole purpose of identifying the product and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the product shall not be construed as an express warranty unless confirmed to be such in writing by the Seller.

10. Exclusion of Consequential Damages and Disclaimer of Liability. Except as otherwise agreed in writing Seller's liability with respect to the products sold hereunder as an express warranty provided in Section 9 hereof, and, with respect to other performance of this contract, shall be limited to that part of the contract price allocable to the product (or part thereof) that gives rise to the claim.

SELLER SHALL NOT BE SUBJECT TO THE DISCLAIMERS. (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT. (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICE RENDERED BY SELLER, AND ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERE TO, AND (3) ALL CONSEQUENTIAL INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.

Without limited and generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties, special or punitive damages, damages for lost profits or revenues, cost of any product recall, loss of use of products of any associated equipment, cost of capital, facilities of services, downtime, shutdown or slowdown costs, or for any other types of economic loss.

THREE YEAR LIMITED WARRANTY

FLEX-TRAX, Incorporated warrants its products against substandard materials and or workmanship for three (3) years from date of purchase. FLEX-TRAX, Incorporated will, at its sole option, either repair or replace any warranted product or part proven to be substandard in material and/or workmanship. Normal in service wear of product or components is not covered by this warranty. Service will vary by driver and/or driving conditions.

Any alleged substandard product shall be shipped freight prepaid to FLEX-TRAX, Incorporated along with a full explanation of the alleged defect. If the product returned is found defective, FLEX-TRAX, Incorporated will either repair or replace the defective products. In the case of products found not to be defective, FLEX-TRAX, Incorporated will make a reasonable effort to contact the customer with repair or replacement charges. If no response is received within thirty (30) days, the products will be returned to customer in the same condition as received.

THE ABOVE, SPECIFIED WARRANTY IS THE SOLE WARRANTY EXTENDED BY FLEX-TRAX, INCORPORATED AND THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED OF ANY TYPE INCLUDING BUT NOT LIMITED TO WARRANTIES FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, EXCEPT AS OTHERWISE SPECIFIED ABOVE. FLEX-TRAX, INCORPORATED SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL OR INCIDENTAL DAMAGES, COST OF LABOR OR REPAIRS, FREIGHT CHARGES, INQUIRIES TO THE PERSON OR PROPERTY OF BUYER OR OTHERS, DOWNTIME, LOSS OF PROFITS, LOSS OF TIME OR ANY OTHER DAMAGES ARISING FROM THE USE OF FLEX-TRAX, INCORPORATED PRODUCTS FROM THE WARRANTY.

This warranty specifies the entire warranty of FLEX-TRAX, Incorporated, and there are no other representations, warranties, or guarantees. There are no other oral or written statements, representations, warranties, or guarantees of any agent, officer, employee, manufacturer or seller which is binding on FLEX-TRAX, Incorporated.

This warranty is null and void if the FLEX-TRAX, Incorporated product is used contrary to specifications and/or intended use READ AND UNDERSTAND INSTALLATION AND OPERATING INSTRUCTIONS BEFORE USE. FLEX-TRAX is designed for the specific purpose of obtaining traction in mud, sand, and/or snow. FLEX-TRAX IS NOT TO BE USED ON DRY PAVEMENT, FLEX-TRAX is not to be used at speeds above thirty (30) miles per hour. FLEX-TRAX is not intended for use on ice. Buyer accepts full responsibility for state and local laws governing the use of FLEX-TRAX on public highways.

NOTE: To the extent permitted by law, FLEX-TRAX, Incorporated disclaims liability for all consequential and incidental damages. The remedies in this limited warranty are the sole and exclusive remedies for breach of warranty. Some states do not allow the exclusion of limitation of incidental or consequential damages so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights and you may also have rights that may vary from state to state.