

**SHIMANO AMERICAN CORPORATION
SHIMANO CANADA LTD
PEARL IZUMI
GENERAL TERMS & CONDITIONS OF SALE
August 2015**

- 1) **Definitions.** As used herein, the following terms shall have the meanings set forth below:
 - a. "Seller" shall mean Shimano American Corporation, Shimano Canada Ltd and/or Pearl Izumi (DashAmerica Inc).
 - b. "Buyer" shall mean the individual or entity for whose account a Purchase Order has been placed with the Seller.
 - c. "Purchase Order" shall mean an oral, written or electronic offer to purchase products sold by Seller submitted to Seller by or on behalf of Buyer.

- 2) **Acceptance of Purchase Orders.** Each Purchase Order placed with Seller shall be subject to acceptance by Seller. Acceptance will be deemed to occur only upon execution by Seller of an invoice or other specific written confirmation of sale in respect of the Purchase Order in question. In the event of any conflict or other inconsistency between the provisions hereof and any Purchase Order, the provisions hereof shall govern in all respects and any conflicting or inconsistent provisions in said Purchase Order shall be deemed null and void and without effect.

- 3) **Prices.** Seller shall sell its products to Buyer at prices established from time to time by Seller which are subject to change without prior notice to Seller's acceptance of a Purchase Order as herein above provided. Unless otherwise agreed in writing by Seller, prices quoted to Buyer or Seller are exclusive of any applicable national, state and local taxes, tariffs, customs duties, imposts, packaging and crating expenses and freight, transshipment and insurance charges, all of which shall be the responsibility of the Buyer.

- 4) **Resale.** Buyer may resell Seller's products only directly to consumers for end use. Buyer may not sell to other retailers or distributors, unless pre-authorized in writing by Seller.

- 5) **Terms of Payment and Delivery.** Except where otherwise provided herein or specified in writing by Seller, the terms of payment hereunder are net cash thirty (30) days from the date of Seller's invoice without deduction or setoff of any kind. If Buyer's account with Seller has any past due and outstanding invoice(s), Buyer agrees to allow Seller sole discretion to apply Buyer's current payment(s) to Buyer's most past due invoice(s) until Buyer's account with Seller is current pursuant to the agreed upon payment terms and conditions between Buyer and Seller. In addition, if Buyer makes any late payment(s) on its account, Seller reserves the right to apply the late payment(s) to any past due and outstanding invoice(s).

- 6) **Terms of Delivery.** Products will be shipped to Buyer F.O.B. Seller's place of shipment. Seller will ship products as promptly as reasonably possible in accordance with the shipment date requested in the Purchase Order; provided, however, that all shipment and delivery dates are based on normal expectancy and are approximate. Any deviation in the quantity of products shipped by Seller will not constitute a breach by Seller, but shall be subject to an equitable adjustment of the price to reflect the quantity of products not shipped. Shipments of products are in all cases subject to availability and partial shipments by Seller of quantities of products requested in the Purchase Order are permitted.

- 7) **Risk of Loss.** Anything herein or in applicable law to the contrary notwithstanding, Buyer will bear risk of loss, deterioration or damage to the products from the time they are placed by Seller in the possession of a carrier. After the passage to Buyer of such risk of loss, deterioration or damage, the products held by Seller, for whatever reason, shall be held for Buyer's account at Buyer's expense, irrespective of whether the products are within the coverage of any policy of insurance maintained by Seller.

- 8) **Reservation of Security Interest.** Seller reserves and retains a security interest in the products and the proceeds thereof until the payment therefore in full has been made by the Buyer. This contract constitutes a security agreement between Buyer, as debtor, and Seller, as secured party, under the Uniform Commercial Code, and Seller has the rights and remedies of a secured party thereunder. Buyer authorizes Seller to file financing statements and to do any other act or thing necessary or useful in perfecting Seller's security interest in the products and shall cooperate fully with Seller in this regard.

- 9) **Inspection.** Buyer shall inspect the products immediately upon receipt. The earliest to occur of any of the following events shall constitute an unqualified acceptance by Buyer of the products as conforming, and a waiver by Buyer of any right of rejection or revocation of acceptance and any claims or defenses based on the quality of the products.
- a. The failure of Buyer to give written notice by registered or certified mail to Seller of any claim of a nonconforming shipment, whether alleging patent or latent defects in the products, within thirty (30) days after receipt by Buyer of the products; or
 - b. An indication by Buyer to Seller that the products are conforming or that Buyer will take or retain same despite nonconformity; or
 - c. An act by Buyer inconsistent with Seller's ownership, including, without limitation, use or resale by Buyer of the products.

Seller's sole and exclusive obligation hereunder to Buyer in respect of nonconforming products shall be to repair or replace, at Seller's option, such nonconforming products at no cost to Buyer; provided, however, that Buyer shall promptly furnish Seller with reasonable substantiation of any allegedly nonconforming products in accordance with Seller's instructions. If Seller, in its sole and absolute discretion, elects to make any warranty with respect to products to the retail purchaser thereof, such warranty will be contained within the original package in which the products are shipped.

EXCEPT FOR SELLER'S OBLIGATION TO REPAIR OR REPLACE NONCONFORMING PRODUCTS AT SELLER'S OPTION, THE PRODUCTS BEAR NO WARRANTIES TO THE BUYER, WHETHER EXPRESS WARRANTIES OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SELLER WILL HAVE NO LIABILITY IN CONTRACT OR TORT FOR ANY DAMAGE, LOSS, COST OR EXPENSE (WHETHER DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL) SUFFERED OR INCURRED BY BUYER, EVEN IF CAUSED BY NEGLIGENCE OR OTHER FAULT OF SELLER.

- 10) **Service Fee and Collection Costs.** There shall be charged to Buyer a delinquency and service fee of eighteen percent (18%) per annum on amounts due Seller, computed for each twenty-four (24) hour period during which payment remains in arrears, and such discounts as may from time to time be offered by Seller to Seller's dealers shall not be made available to Buyer while any payments owed by Buyer to Seller remain in arrears. Buyer shall pay, or reimburse Seller for, any and all costs and expenses incurred by Seller in the collection of any amounts due hereunder, including, without limitation, the costs of any court proceedings or arbitration and attorney's fees.
- 11) **Acceleration.** Seller may demand immediate payment of any and all amounts owed by Buyer to Seller hereunder or under any other contract of sale between Buyer and Seller and/or cancel any previously accepted Purchase Order by written notice to Buyer upon any material breach by Buyer of the terms and conditions hereof or any Purchase Order or upon the Buyer filing a petition under any insolvency or bankruptcy law or making a general assignment for the benefit of creditors, whether voluntary or involuntary, or being dissolved, becoming insolvent or being adjudged bankrupt.
- 12) **Relationship of Parties.** The purchase of products from Seller by Buyer does not constitute Buyer a partner, employee or agent of or joint venturer with Seller or authorize Buyer to represent or act for Seller in any manner, and Buyer will have no right or authority to assume or create any obligation of any kind, express or implied, on behalf of Seller or authority to bind Seller in any respect whatsoever. Buyer shall not use Seller's trade names and trademarks in any advertising material employed in connection with its marketing and resale of products purchased from Seller or in any manner without the express written consent of Seller.
- 13) **Force Majeure.** Seller shall be excused from liability for any delays or failure to deliver or fill any Purchase Order where caused by acts of God, fires, floods, strikes, work stoppages, accidents, war, terrorism, allocations or other controls, or regulations including export or import regulations of any foreign or U.S. federal, state or local government, shortage of trucks or any other means of transportation, fuels, materials or labor, or any other cause beyond Seller's control, whether or not similar in kind or class to those aforementioned.

- 14) Modification and Waiver.** No modification of the terms and conditions hereof shall be binding unless in writing and signed by Seller, and no waiver by either party express or implied, of any right hereunder or failure to perform or breach by the other party shall be deemed a waiver of any other right hereunder or any other failure or breach by the other party.
- 15) Governing Law.** These terms shall be constructed and enforced pursuant to the law of the State of California, U.S.A. (without regard to choice of law principles of any jurisdiction).