

Effective August 22, 2023



## TERMS AND CONDITIONS OF SALE

Please read the following Terms and Conditions of Sale (“**Terms**”) carefully. These Terms materially affect the parties’ obligations. American Range Corporation (“**Seller**” or “**We**”) is bargaining for and will do business with Customer (as defined below), as it relates to the matters contained in this Agreement (as defined below), only pursuant to these Terms. Seller’s acceptance of orders for the purchase of any goods (the “**Products**”) is expressly subject to and conditioned on the person or entity buying the Products directly from Seller (“**Customer**” or “**You**”) agreeing to these Terms. THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTION ARBITRATION OR LITIGATION.

**1. CONTRACT FORMATION:** All orders for Products are subject to Seller’s acceptance of such order at its office. The provisions of any purchase order or other writing inconsistent with these Terms will not constitute a part of the contract of sale. Seller’s acceptance of any order for Products is conditional on Customer’s agreement to these Terms, which supersede any of Customer’s additional, different or inconsistent terms or conditions. Seller’s acknowledgement of any order includes, either directly or through incorporation by reference, these Terms. If Seller does not receive written objection to any of these Terms within ten (10) days after Customer receives the document referencing these Terms from Seller, or if Customer accepts delivery of the Products, whichever occurs first, these Terms shall be deemed accepted by Customer. The failure of Seller to object to provisions contained in any purchase order or communication from Customer shall not be construed as an acceptance of any such provision or as a waiver of these Terms. Without limiting the foregoing, Seller expressly objects to all additional or contradictory terms specified in any other acknowledgement, purchase order, confirmation or other document pertaining to the Products, including without limitation those terms and conditions regarding warranty and indemnity. No online or electronic terms or conditions of Customer will be binding on Seller even though such terms were “accepted” in order to access or use a system. These Terms, together with the email, price quotation, order acknowledgement, or other similar form issued by Seller and referencing or relating to these Terms (together, this “**Agreement**”) is intended by the parties to be the final expression of their agreement and are intended also as a complete and exclusive statement of the terms and conditions of the matters thereof and hereof. Seller reserves the right to update these Terms at any time, at its sole discretion, and becomes binding upon the date of publishing. For the most current version, see our website at [www.americanrange.com](http://www.americanrange.com).

**2. CHANGES; CANCELLATIONS:** Requests by Customer for cancellation, termination, modification, suspension, or delay in shipment of Customer’s order are subject to acceptance or rejection by Seller in its sole discretion. Such requests will not be accepted on terms that do not fully indemnify and reimburse Seller against any loss associated therewith. Such indemnity must include recovery of all costs incurred, including normal indirect and overhead charges, and a normal profit. Seller generally will not approve any change to an order proposed by Customer less than thirty (30) days prior to shipment. In addition to any remedies that may be provided under these Terms or applicable law, Seller may terminate this Agreement or any order, in whole or in part, without liability and with immediate effect upon notice to Customer for any reason or no reason at all, including without limitation if Customer (a) fails to pay any amount when due under this Agreement or any other orders from Customer, (b) has not otherwise performed or complied with any term of this Agreement or any other orders from Customer, in whole or in part, or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. The termination of this Agreement shall not terminate any indemnification or confidentiality obligation of Customer hereunder.

**3. PAYMENT, TERMS AND PRICES:** Unless otherwise agreed to in a writing signed by Seller: (a) quoted prices are those in effect at the time of quotation and are based upon delivery in a single lot unless otherwise stated in the written quotation or proposal from Seller; (b) all prices are subject to increases or adjustment at the time of shipment equal to any additional costs incurred by Seller as a result of any changes in laws, regulations or orders or any raw material or labor price increases from the date of any quotation or order; and (c) payment is due and payable within thirty (30) days from date of invoice. Any manufacturer’s, retailer’s, occupation, use, sales or excise tax, duty, custom, inspection or testing fee or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on or measured by any transaction between Seller and Customer shall be paid by Customer in addition to the contract price as quoted or invoiced unless Seller specifically states in writing that such taxes or charges are included in the contract price. In the event Seller is required to pay any such tax, fee or charge, Customer shall reimburse Seller therefor or, in lieu of such payment, at the time the order is submitted, Customer shall provide Seller an acceptable certificate exempting Seller from any such tax, fee or charge. If Customer makes payment with a credit card, Customer represents and warrants (i) the credit card information Customer supplies to Seller is true, correct, and complete, (ii) Customer is duly authorized to use such credit card for the purchase, (iii) charges incurred by Customer will be honored by Customer’s credit card company, and (iv) Customer will pay charges incurred by Customer at the posted prices, including all applicable taxes, if any. Seller is not responsible for pricing, typographical, or other errors in any offer by Seller, and Seller reserves the right to cancel any orders arising from such errors.

**4. ACCEPTANCE OF PRODUCTS:** All claims for errors or shortages or damaged Products must be made by Customer within ten (10) days after Products are received. Failure to make any such claims within such time is deemed to constitute Customer’s irrevocable acceptance of Products. All weights, measurements, dimensions, drawings, specifications and other particulars of the Products, whether contained in plans, photographs, catalogs, price lists or advertising material or otherwise, are only approximate and are included solely for Customer’s guidance. Such particulars do not form part of this Agreement or any other contract, and deviations or subsequent changes are not grounds for nonacceptance of the Products and do not constitute a breach of this Agreement.

**5. DELIVERY, TITLE AND RISK OF LOSS:** Unless otherwise mutually agreed to by the parties in writing, all shipments are EXW (Incoterms 2020) Seller’s dock. All risk of loss and title to the Products shall pass to the Customer at the point of Seller’s delivery of the Products to the carrier. Seller will make all commercially reasonable efforts to comply with the Customer’s requests as to method of transportation; provided, however, that Seller reserves the right to use an alternate method of transportation if the method specified by the Customer is deemed by Seller to be unavailable or otherwise unsatisfactory. Customer agrees that shipments are to be routed “Best Way”. Shipping and delivery dates are estimates only and Seller shall not be held responsible for failure to meet such estimated dates. Seller shall not be liable for any costs, expenses or damages of any nature (whether general, consequential, as a penalty or liquidated or otherwise) arising out of or owing to (a) any delays in delivery or (b) failure to make delivery at agreed or specified times due to circumstances beyond Seller’s reasonable control, including but not limited to strikes or labor difficulties, acts or omissions of any governmental authority or Customer, accident, pandemic (including any “shelter-in-place” or similar government order), insurrection or riot, fires, floods, breakdown of essential machinery, war or terrorism, embargoes, shortages, delays in transportation or inability to obtain labor, services, energy, fuels or materials from usual sources. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

**6. SECURITY INTEREST:** Customer hereby grants to Seller and Seller hereby retains a security interest in all the Products and accessories and additions thereto sold by Seller and held by Customer, wherever located, whether now existing or hereafter acquired, all spare parts and components therefor, and all proceeds of the sale or other disposition including, without limitation, cash, accounts, contract rights, instruments and chattel paper. Customer shall join with Seller in executing one or more financing statements pursuant to the Uniform Commercial Code if requested by Seller and then in a form satisfactory to Seller to evidence and perfect Seller's security interest in the Products. In the event Customer shall be in default under this Agreement, Seller shall have the remedies of a secured party under applicable law, including without limitation the Uniform Commercial Code, and Seller may thereupon enter the premises of Customer and remove the Products and make them available to Seller for repossession. Customer agrees to pay Seller's attorney's fees and costs incurred by Seller in collecting any amounts due hereunder or in otherwise exercising its rights and remedies hereunder. Seller may set off any amount due Customer, whether or not due under this Agreement, against any amount that may become due to Seller hereunder. This security interest granted under this Section constitutes a purchase money security interest under applicable law.

**7. WARRANTY, EXCLUSIVE REMEDY: THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.** Seller warrants the Products to be free from defects in material and workmanship under normal use and service and when stored, maintained, and installed in strict accordance with factory recommendations. Seller's sole obligation to Customer under this warranty is the repair or replacement by Seller or a Seller-authorized service agency, at Seller's option, of any Product or any part thereof deemed defective upon Seller's examination, for a period of: (i) if Customer or any end-user customer is an individual consumer (a "**Consumer**"), the Warranty Duration from the date of delivery of the Products to Customer or such end-user customer, (ii) if Customer is not a Consumer, the Warranty Duration from the date of manufacture of the Products, and (iii) if any end-user customer is not a Consumer, the Warranty Duration from the date of purchase of the Products by such end-user customer from Seller's Distributor/Dealer, not to exceed (30) months from date of manufacture. A Consumer **MUST** provide proof of purchase of the Products from Seller or Seller's Distributor/Dealer, including the delivery date, to a Seller authorized service agency. If no product invoice or product registration is provided showing the date of delivery of the Products to a Consumer, Seller warrants the Products to be free from defects in material and workmanship for the Warranty Duration effective from the date of purchase by Consumer. A Customer or end-user customer that is not a Consumer **MUST** provide proof of purchase of the Products from Seller or Seller's Distributor/Dealer to a Seller authorized service agency. If no product invoice or product registration is provided showing the date of purchase of the Products to a Customer or end-user customer that is not a Consumer, Seller warrants the Products to be free from defects in material and workmanship for the Warranty Duration effective from the date of manufacture of the Products.

The "Warranty Duration" shall mean the specific periods and coverages set forth below for specific Product components, or, to the extent not listed below, twenty-four (24) months. Credit for Products or parts returned with the prior written permission of Seller will be subject to the terms shown on Seller's material return authorization form. **PRODUCTS OR PARTS RETURNED WITHOUT PRIOR WRITTEN PERMISSION OF SELLER WILL NOT BE ACCEPTED FOR CREDIT.** Expenses incurred by Customer or any end-user customer in returning, replacing or removing the Products will not be reimbursed by Seller. If the defect comes under the terms of this limited warranty, the Products will be repaired or replaced and returned to the Customer and the cost of return freight will be paid by Seller. The remedy of repair or replacement provided for herein is Customer's and any end-user customer's exclusive remedy. Any improper use, alteration, repairs, tampering, misapplication, improper installation, application of improper voltage or any other action or inaction by Customer, an end-user customer or others (including the use of any unauthorized service agency) that in Seller's sole judgment adversely affects the Product shall void this warranty. The warranty expressly provided herein may only be asserted by Customer and may not be asserted by Customer's customers or other users of the Products; provided, however, that if Customer is an authorized equipment dealer of Seller, Customer may assign the warranty herein to Customer's customers, subject to all of the limitations of these Terms, and in such case, the warranty shall be exclusively controlled by Seller in accordance with these Terms.

The Warranty Duration for broiler burners', lower and upper grates and radiants is 90 days.

The Warranty Duration for replacement parts is 90 days.

**TO THE EXTENT NOT PROHIBITED BY LAW, THIS LIMITED WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED.**

**THE FOLLOWING PARAGRAPH SHALL APPLY ONLY IF YOU ARE A CONSUMER: THE DISCLAIMERS OF IMPLIED WARRANTIES DISCUSSED ABOVE DO NOT APPLY TO YOU. HOWEVER, TO THE EXTENT NOT PROHIBITED BY LAW, WE LIMIT THE DURATION AND REMEDIES OF ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE DURATION OF ONE YEAR STARTING ON THE DATE OF DELIVERY OF YOUR PRODUCTS TO YOU. THE LIMITED WARRANTY DURATION IS NOT EXTENDED IF WE REPAIR OR REPLACE A WARRANTED PRODUCT. SELLER MAY CHANGE THE AVAILABILITY OF THIS LIMITED WARRANTY AT SELLER'S DISCRETION, BUT ANY CHANGES WILL NOT BE RETROACTIVE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. NEITHER ANY PERFORMANCE OR OTHER CONDUCT, NOR ANY ORAL OR WRITTEN INFORMATION, STATEMENT OR ADVICE PROVIDED BY SELLER OR ANY OF SELLER'S SUPPLIERS, AGENTS OR EMPLOYEES WILL CREATE A WARRANTY, OR IN ANY WAY INCREASE THE SCOPE OR DURATION OF THIS LIMITED WARRANTY.**

**LIMITATIONS and EXCLUSIONS:** This limited warranty is non-transferable and is limited to the following Products: ranges, counter hot plates, griddles, char-broilers, teppanyaki griddles, over-fired salamander broilers, cheesemelters, custom combo ranges, convection ovens, and counter equipment. Products purchased and installed for use outside the continental United States are excluded from this limited warranty. In addition, notwithstanding anything herein to the contrary, this limited warranty does not cover any product which has been modified by unauthorized personnel or changed from its original design, nor normal parts wear and tear and maintenance. Additionally, notwithstanding anything herein to the contrary, the limited warranty herein will not cover components in Seller's sole discretion such as, but not limited to, the following: coated incandescent light bulbs, fluorescent lights, heat lamp bulbs, coated halogen light bulbs, halogen heat lamp bulbs, xenon light bulbs, LED lights, porcelain components, glass components, thermostats, tubes, glass components, fuses, or Product or part product failure in booster tanks, fin tube heat exchangers, or other water heating equipment caused by liming, sediment buildup, chemical attack, or freezing.

**8. LIMITATION OF LIABILITY:** SELLER WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, COSTS OF SUBSTITUTE PRODUCTS OR

LABOR COSTS, ARISING FROM THE SALE, USE OR INSTALLATION OF THE PRODUCTS, FROM THE PRODUCTS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER CONCERNING THE SALE, USE OR INSTALLATION OF THE PRODUCTS, EVEN IF SELLER IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNTS PAID TO SELLER BY CUSTOMER FOR THE PRODUCTS WITHIN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO CUSTOMER'S CLAIM. THE LIMITATIONS SET FORTH HEREIN REGARDING SELLER'S LIABILITY SHALL BE VALID AND ENFORCEABLE NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY SPECIFIED IN SECTION 7.

IF YOU ARE A CONSUMER, SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**9. WORK BY OTHERS; ACCESSORIES AND SAFETY DEVICES:** Unless agreed to in writing by Seller, Seller shall have no responsibility for labor or work of any nature relating to the installation and operation or use of the Products, all of which shall be performed by Customer or others. It is the responsibility of Customer to furnish such accessory and safety devices as may be desired by it and/or required by law (including United States Occupational Safety and Health Administration standards) relating to Customer's use of the Products. Customer shall be solely responsible for ascertaining that the Products are installed and operated in accordance with all applicable laws, regulations, rules and ordinances. Customer agrees to cause the Products to be installed in strict accordance with Seller's documentation, if any, and will indemnify and hold harmless Seller, its employees, successors and assigns against any and all damages, demands, suits, causes of action, claims and expenses arising directly or indirectly from Customer's failure to cause the Products to be properly installed, operated or used.

**10. INTELLECTUAL PROPERTY DEFENSE:** Seller at its own expense will defend and hold Customer harmless from and against all damages, costs and expenses arising from any infringement or misappropriation of any patent, trademark, registered design or other intellectual property rights caused by Products originally manufactured by Seller, provided such claim does not result from Customer's designs, drawings, samples, specifications or instructions regarding the Products, modification of such Products following shipment by Seller, or combination, operation or use of the Products with devices, products, parts, or software not supplied or manufactured by the Seller; Customer gives Seller immediate notice in writing of any claim or institution or threat of suit; and Customer permits Seller to defend or settle the same, and gives all immediate information, assistance and authority to enable Seller to do so. Customer will defend and hold Seller harmless from and against all damages, costs and expenses whatsoever arising from any claim for infringement or misappropriation of intellectual property rights relating to Seller's compliance with any designs, drawings, samples, specifications or instructions regarding the Products provided by Customer; the modification of the Products following shipment by Seller; or the combination, operation or use of the Products with devices, products, parts, or software not supplied or manufactured by the Seller.

**11. INTELLECTUAL PROPERTY OWNERSHIP:** Seller shall retain all rights, title and interest in and to any and all patents, copyrights, trademarks and other intellectual property and proprietary rights and the goodwill associated thereby pertaining to the Products, as well as any associated developments Seller creates, realizes or reduces to practice during Seller's fulfillment of an order. Except as otherwise particularly provided, no license, transfer or assignment of proprietary rights shall occur as a result of these Terms or any order.

**12. TOOLS:** All dies, tools, patterns and the like involved in the manufacture of the Products are and will remain the property of Seller, except that any dies, tools, patterns and the like specifically ordered, separately itemized and solely paid for by Customer ("**Customer Tooling**") will remain the property of Customer. Seller will return any Customer Tooling to Customer upon request after all amounts owed to Seller have been paid in full; provided, however, that if Customer does not request in writing and accept delivery of the Customer Tooling within thirty (30) days following the earlier of (a) the expiration or termination of this Agreement, (b) the conclusion of the project requiring the use of the Customer Tooling, or (c) Seller's written request, then Seller shall thereafter own the Customer Tooling and may use or dispose of the Customer Tooling in Seller's sole discretion, and all of Customer's rights in and to the Customer Tooling shall cease and be of no further effect. Customer is responsible for insuring all Customer Tooling.

**13. INDEPENDENT CONTRACTOR:** Seller, its agents and other suppliers shall at all times be independent contractors, and Customer shall make no express or implied representations to the contrary.

**14. ECONOMIC SANCTIONS LAWS:** Customer represents and warrants that Customer is in compliance with all laws administered by the U.S. Treasury Office of Foreign Assets Control or any other governmental entity imposing economic sanctions and trade embargoes ("**Economic Sanctions Laws**") against designated countries, entities and persons ("**Embargoed Targets**"). Customer is not an Embargoed Target or subject to any Economic Sanctions Law. Customer shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, Customer shall not (a) directly or indirectly export, re-export, transship or otherwise deliver the Products or any portion of the Products to an Embargoed Target or (b) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law.

**15. CONFIDENTIALITY:** Customer agrees that all information furnished hereunder by Seller or any person acting on Seller's behalf, including the pricing of the Products, and all information learned and observed about Seller through the performance of this order is confidential. Customer shall not disclose any such information to any third party or use such information for any purpose other than performing this order without Seller's prior written consent.

**16. DISPUTE RESOLUTION:** Any disputes arising out of or in connection with these Terms or any order arising hereunder shall be finally settled under the Commercial Arbitration Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. Any such arbitration shall occur in Chicago, Illinois. YOU ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION. If you are a Consumer, you may elect to pursue your claim in small-claims court rather than arbitration if you provide us with written notice of your intention to do so within 60 days of your purchase. The arbitration or small-claims court proceeding will be limited solely to your individual dispute or controversy. You agree to an arbitration on an individual basis. In any dispute, YOU WILL NOT BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A

**PRIVATE ATTORNEY GENERAL CAPACITY.** The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

**17. GOVERNING LAW:** These Terms and any order arising hereunder shall be governed and construed according to the laws of the State of Wisconsin, without regard for its conflict of laws provisions, except that the United Nations Convention on Contracts for the International Sales of Goods shall not apply.

**18. COMPLETE AGREEMENT:** THE COMPLETE AGREEMENT BETWEEN SELLER AND CUSTOMER IS CONTAINED HEREIN AND NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS STATED BY CUSTOMER SHALL BE BINDING UNLESS OTHERWISE AGREED TO BY SELLER IN A WRITING SIGNED BY SELLER. No course of prior dealing and no usage of trade shall be relevant to supplement or explain any terms used in this Agreement. This Agreement (a) may be modified only in writing by Seller, (b) except pursuant to the express terms of Section 7, may not be assigned or delegated by Customer, in whole or in part, without Seller's prior written consent, and (c) is made in the English language only, which language shall be controlling in all respects and all versions of the terms in any other language shall be for accommodation only and shall not be binding on the parties to this Agreement. The failure of Seller to insist upon a strict performance of any of the terms and conditions stated herein shall not be considered as a continuing waiver of any such term or condition, or any other term or condition, or any of Seller's rights. In addition, if any of the terms of this Agreement are held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect the remainder of this Agreement and such remainder shall remain in full force and effect.