

TERMS AND CONDITIONS

1. **ENTIRE CONTRACT.** The terms and Conditions set forth below and on the face side hereof constitute the expression of all the terms of this Agreement and a complete and exclusive statement of the Agreement between Buyer and Seller. All representations, promises, warranties or statements by any agent or employee of Seller that differ in any way from the Terms and Conditions set forth herein shall be given no effect or force. Any additional, contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the goods described on the face hereof are hereby objected to. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under the Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to the approval by seller at its offices in Cuyahoga County, Ohio. Any waiver or alteration of terms herein must be in writing and signed by an Executive Officer of the Seller. The terms and conditions set forth herein shall apply to any subsequent re-orders placed by the Buyer but shall be subject to changes in price.
2. **PRICE.** All prices are F.O.B. Seller's plant, Cuyahoga County, Ohio, unless otherwise specifically set forth on the face side hereof. Prices stated are fixed for a period of ten (10) days from the date hereof and subject to change without notice in the event of: (1) alterations in specifications, quantities, designs or delivery schedules; (2) increases in the cost of fuel, power, material, supplies or labor, and/or; (3) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the Goods purchased hereunder. Unless otherwise indicated on the face side hereof, payment shall be due thirty (30) days from the date of invoice. No discount will be allowed unless specifically set forth on the face side hereof. Buyer agrees to pay a delinquency charge of 1 and ½ % per month, or if such rate shall exceed the maximum rate allowed by applicable law, then a delinquency charge calculated at such maximum rate, on the outstanding balances is not paid when due, from the date such balances were due until payment with respect thereof is made in full. Until the purchase price and all other sums due pursuant hereto are paid in full, Seller retains a security interest in the Goods described on the face hereof and in all proceeds of said Goods. Buyer shall execute financing statement(s) on request and irrevocably authorizes Seller to execute and file same. Buyer hereby agrees that in the event it fails to timely pay for the goods as agreed herein, Buyer shall be liable to Seller for costs of collection including court costs, attorney fees and expense associated with suit and collection.
3. **WARRANTY.** SELLER WARRANTS THAT GOODS MANUFACTURED BY IT WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR NINETY (90) DAYS FOLLOWING THE DATE OF SHIPMENT. CLAIMS FOR DEFECTIVE MATERIALS MUST BE PRESENTED TO THE SELLER IN WRITING AND MUST INCLUDE THE FOLLOWING INFORMATION ALONG WITH A SAMPLE OF THE DEFECTIVE MATERIAL; REASONS OR REJECTION, DATE OF RECEIPT AND BUYER PURCHASE ORDER NUMBER. SELLER RESERVES THE RIGHT TO CONDUCT AN ON-SITE INSPECTION OF REJECTED MATERIAL AND/OR BUYER'S MANUFACTURING PROCESS(ES) WITHIN (30) DAYS OF RECEIPT OF WRITTEN NOTIFICATION OF REJECTION FROM THE BUYER. IF AT BUYER'S REQUEST, MATERIAL IS SHIPPED TO A THIRD PARTY, SELLER HAS NO FURTHER RESPONSIBILITY FOR ANY SHORTAGES, CONDITIONS OF THE MATERIAL OR COMPLIANCE WITH SPECIFICATIONS ONCE SUCH MATERIALS HAS BEEN RECEIVED BY SAID THIRD PARTY. SELLER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE BREACH OF ANY OF ITS OBLIGATIONS WITH RESPECT TO THE GOODS OR CONTRACT. IN NO EVENT SHALL SELLER'S LIABILITY FOR DAMAGES IN RESPECT TO GOODS SOLD EXCEED THE PRICE OF THE GOODS OR MATERIALS PURCHASED BY BUYER AS TO WHICH A CLAIM IS MADE. NO AFFIRMATION OF SELLER BY WORDS OR ACTIONS, OTHER THAN AS SET FORTH IN THE SECTION SHALL CONSTITUTE A WARRANTY. GOODS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS THEREOF. THIS WARRANTY DOES NOT COVER LABOR OR OTHER COSTS OR EXPENSES TO REMOVE OR INSTALL ANY DEFECTIVE, REPAIRED OR REPLACED GOODS. SELLER'S WARRANTEE DOES NOT APPLY TO ANY GOODS WHICH HAVE BEEN SUBJECTED TO MISUSE, MISHANDLING, MISAPPLICATION, NEGLIGENCE (INCLUDING BUT NOT LIMITED TO IMPROPER MAINTENANCE), ACCIDENT, IMPROPER INSTALLATION, MODIFICATION (INCLUDING BUT NOT LIMITED TO USE OF UNAUTHORIZED PARTS OR ATTACHMENTS), OR ADJUSTMENT OR REPAIR PERFORMED BY ANYONE OTHER THAN SELLER OR ONE OF SELLER'S AUTHORIZED AGENTS. ANY CLAIM BY BUYER WITH REFERENCE TO THE GOODS SOLD HEREUNDER SHALL BE DEEMED WAIVED BY THE BUYER UNLESS SUBMITTED IN WRITING TO SELLER WITHIN THE EARLIER OF (I) THIRTY (30) DAYS FOLLOWING THE DATE BUYER DISCOVERED, OR BY REASONABLE INSPECTION SHOULD HAVE DISCOVERED, ANY CLAIMED BREACH OF THE FOREGOING WARRANTY, OR (II) SIX (6) MONTHS FOLLOWING THE DATE OF SHIPMENT. ANY LAWSUIT FOR BREACH OF THE FOREGOING WARRANTY SHALL BE COMMENCED WITHIN ONE YEAR FROM THE DATE THE ALLEGED BREACH WAS DISCOVERED OR SHOULD HAVE BEEN DISCOVERED, OR SHIPMENT OF THE GOODS, WHICHEVER OCCURS FIRST.
4. **LIMITATION OF LIABILITY.** IN NO EVENT WHATSOEVER SHALL SELLER'S LIABILITY TO BUYER EXCEED THAT PORTION OF THE PURCHASE PRICE OF SUCH GOODS OR PARTS WHICH HAS BEEN PAID BY BUYER. AT SELLER'S REQUEST, BUYER WILL SEND, AT BUYER'S SOLE EXPENSE, ANY ALLEGEDLY DEFECTIVE GOODS OR PARTS OF GOODS TO THE PLANT OF SELLER WHICH MANUFACTURED THEM. GOODS MANUFACTURED TO BUYER'S SPECIFICATIONS SHALL NOT BE SUBJECT TO ANY SELLER WARRANTIES OF FITNESS FOR INTENDED PURPOSE OR USAGE.

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5. **DISCLAIMER OF CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH. INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, OVERHEAD, ANTICIPATED PROFITS, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, OR LOSSES OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED BY USE OF GOODS). BUYER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH ALLEGED LOSS, DAMAGE OR INJURY.
6. **ACCEPTANCE AND TRANSPORTATION.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the goods. Unless Buyer provides Seller with written notice of any claim for shortages of or defects in the goods within forty-eight (48) hours after receipt of shipment, such goods shall be deemed finally inspected, checked and accepted by Buyer. In absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expenses and valuation.
7. **TITLE AND RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to carrier, and any claims for losses or damage shall be made by Buyer directly with carrier.
8. **CREDIT TERMS.** All orders and shipments shall be at all times subject to the approval of the Seller's credit department. The Seller reserves the right of declining to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility, and Seller shall not in such event be liable for breach and non-performance of contract in whole or in part.
9. **TAXES.** Unless otherwise specifically provided on the face hereof, the price for the Goods purchased is net and does not include sales, use, excise or similar taxes, whether federal, state or local. The amount of any such taxes applicable to the Goods shall be paid by Buyer in the same manner and with the same effect as if originally included in the purchase price.
10. **PACKAGING.** Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer.
11. **DELAYS.**
 - A. Unless expressly specified to the contrary, Goods in stock will be shipped immediately and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss, fault or expenses arising out of delays in shipment or other non-performance of this Agreement caused or imposed by: (a) strikes, fires, disasters, riots, acts of God; (b) acts of Buyer (c) shortages of labor, fuel power, materials, supplies transportation or manufacturing facilities; (d) governmental action; (e) subcontractor delay; or (f) any other cause or condition beyond Seller's reasonable control. In the event of any such delay or non-performance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.
 - B. Finished goods produced but not shipped after sixty (60) days will be invoiced per quoted billing method with payment due within thirty (30) days of invoice date, unless otherwise specified in writing by the Seller. Finished goods not shipped after 90 days will be subject to published monthly storage and/or restocking fees.
12. **TERMINATION, CANCELLATION AND CHANGES.** Orders cannot be terminated, canceled or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent, and subject to conditions then agreed upon which shall indemnify Seller against liability and expense incurred and commitments made by Seller, and which shall provide for profit on work and process in contract value of products or parts completed and ready for shipment and any restocking charges and shipment fees imposed by Seller.
13. **PATENTED PROCESS.** The purchase of the Goods does not entitle Buyer to employ the same with any patented process owned by Seller or others.
14. **PATENT INFRINGEMENT.** It is expressly understood and agreed by Buyer that Seller does not warrant that the Goods are free of the rightful claim of any third person by way of infringement or the like.
15. **BUYER SUPPLIED MATERIALS AND INVENTORIES.** Seller provides warehouse and storage space under normal conditions for Buyer supplied materials, however, Seller is not responsible for any damage to Buyer's inventories stored in Seller's plant under normal conditions or any deterioration or Buyer's inventories in Seller's plants. Seller's liability for buyer's supplied material shall be limited to refunding the purchase price of the conversion or parts thereof.

Buyer agrees to defend and indemnify Seller against any claims or liabilities for, or by reason of, the infringement of any United States Patent arising from the manufacture of any of the Goods in accordance with the specifications furnished by Buyer or from the sale thereof.
16. **ADDITIONAL CHARGES.** If substitute or additional Goods, or repair parts, are purchased by Buyer from Seller, the Terms and Conditions of this Contract shall be applicable thereto, the same as of such substitute or additional Goods or repair parts had been originally purchased hereunder.

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17. **GENERAL CONDITIONS.** No agent, salesman or other party is authorized to bind Seller by any agreement, warrant, statement, promise or understanding except as herein expressed. The sale of Goods pursuant this order shall be governed by the laws of the State of Ohio. In addition to the rights and remedies conferred upon Seller by law, Seller shall not be required to proceed with the performance of any order of contract if Buyer is in default in performance of any order or contract with the Seller, and in case of doubt as to Buyer's financial responsibility, shipments under this order may be suspended or sent sight draft with bill of lading attached by Seller. Any clerical errors by Seller are subject to correction. No delay or omission by Seller in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be constituted as a bar to or a waiver of any such right or remedy on any future occasion. This contract shall be binding upon and shall insure to the benefit of the successors and assigns of Buyer and Seller, provided, however, that Buyer may only assign or transfer this Contract, in whole or in part, with the Seller's prior written consent. Upon Seller's acceptance of Buyer's order the Terms and Conditions set forth herein and in the Seller's acknowledgement shall constitute the entire agreement between Buyer and Seller, and no statement, correspondence, sample or other term shall modify or affect the terms hereof.
18. **EQUAL OPPORTUNITY CLAUSE.** The Equal Employment Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and veterans of the Vietnam era, set forth in 41 CFR 60-250.4, the affirmative action clause for disabled workers, set forth in 41 CFR 60-741.4, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this purchase order. By accepting this purchase order, vendor certifies that it complies with the authorities cited above, and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8.
19. **CHOICE OF FORUM.** The parties hereto agree that neither of them shall commence any action (including lawsuits or arbitrations) whatsoever, at law or in equity, for any matter or assert any claims relating to or arising from this agreement or the relationship of the parties, in any forum or court other than the State Courts and/or Federal Courts located in Cuyahoga County, Ohio. The parties hereby consent to the exclusive jurisdiction of said courts for the litigation of any claims that exist or arise by and between them now or in the future.