

TERMS AND CONDITIONS OF SALE

1. Applicability. These terms and conditions of sale (“Terms”) are the only terms that govern the sale by us, our subsidiaries and affiliates, if applicable, to you of the goods and services we provide to you (“Goods”). No agreement for the supply of Goods shall come into existence until we provide you with an order acknowledgment or deliver Goods to you. These Terms and any related quotation, acknowledgement or invoice (collectively, the “Agreement”) comprises the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Our offer to sell Goods is conditioned upon your acceptance of the Agreement and we expressly reject any other terms proffered by you at any time whether as part of a written, electronic or verbal communication to purchase the Goods (“Order”). Our delay or failure to object to any terms or conditions received from you, including your Order, will not be a waiver of any provision of the Agreement. Fulfillment of your Order does not constitute acceptance of any of your terms and conditions, and does not serve to modify or amend the Agreement. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. Prices. The prices of Goods are as stated in the Agreement and, unless we state otherwise, are based on shipment FOB our shipping point. The prices of Goods exclude all taxes (imposed by any state, country or other governmental entity), duties, special packing and freight costs (including, without limitation, the cost of loading goods on board a carrier) and related costs and expenses, all of which shall be added to such prices and paid by you.

3. Payment Terms. All Goods shall be invoiced upon shipment. Unless we specify otherwise in the Agreement, payments are due and must be received by us within thirty (30) days after the date of invoice. Each payment shall also include all amounts associated with such Goods including, without limitation, amounts relating to pallets and freight. You shall make payments by check, wire transfer, or electronic fund transfer. If you fail to pay any sum when due, then, in addition to all other remedies available under this Agreement or at law (which we do not waive by the exercise of any right under this Section 3), we reserve the right to: (i) charge interest starting on the date such payment is due until paid in full at the lesser of one and one-half percent (1.5%) per month or any part thereof or the maximum permitted by law, whichever is less; (ii) withdraw credit; (iii) impose other payment terms or late charges; (iv) cease further shipments; or (v) impose any combination of these actions. You shall reimburse us for all costs incurred in collecting late payments, including, without limitation, attorneys’ fees. You shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with us, whether relating to our breach, bankruptcy or otherwise. Time is of the essence regarding your payment obligations.

4. Title, Risks and Delivery. Title and risk of loss to such Goods shall pass to you at the earlier of (i) the date when you obtain physical possession of such Goods or part thereof or (ii) the date such Goods are loaded on a carrier for delivery to you. If no carrier is specified by you sufficiently in advance of the required date(s) of shipment, we may either (i) select any mode(s) of transportation and any common carrier satisfactory to us and such selection shall conclusively be deemed satisfactory to you, or (ii) cancel the Order and charge you a restocking fee in an amount reasonably determined by us in our sole discretion. Unless we specify otherwise, we will deliver the Goods FOB our shipping point using our standard methods for packaging and shipping such Goods. The Goods will be delivered within a reasonable time after the receipt of your Order, subject to availability of the Goods. You acknowledge and agree that all delivery times or shipment dates are approximate and may be changed. Time for delivery of Goods is not of the essence and we shall not be liable for any loss or damage you may suffer due to any changed or missed delivery times or shipment dates. We shall not be liable for any delays, loss or damage in transit. We may, in our sole discretion, without liability or penalty, make partial shipments of Goods to you. Each shipment will constitute a separate sale, and you will pay for the quantity of Goods shipped whether such shipment is in whole or partial fulfillment of your Order. In the event you fail to take delivery of the Goods tendered by us, the Goods shall be deemed to have been delivered and you shall, notwithstanding anything to the contrary herein, (i) thereafter bear all risk of loss with respect to such Goods, (ii) promptly reimburse us for any packing, un-packing, loading, un-loading, storage, protection, freight and other costs thereafter incurred by us in connection with such Goods, and (iii) pay us, at our then current commercial billing rates, for any storage of such Goods by us.

5. Security Interest. As collateral security for the payment of the purchase price of the Goods, we shall retain, and you hereby grant to us, a lien on and security interest in and to all of your right, title and interest in, to and under the Goods, now owned or hereafter acquired and wherever located, including all returns, repossessions and parts, and all chattel paper, instruments, documents, accounts, general intangibles, contract rights and security agreements (resulting from the sale or other disposition of such Goods) and all cash and non-cash proceeds of any of the foregoing, which shall secure the payment of all amounts due from you to us for such Goods. The security interest granted under this provision constitutes a purchase money security interest under the Ohio Uniform Commercial Code. You shall, at our request, execute, and you hereby grant us the right to execute in your name, any documents necessary to grant to us a security interest in such Goods and any filings necessary to perfect such purchase interest in all jurisdictions where we deem such filings to be necessary to protect our interest.

6. Export Control. You shall comply with all export and import laws of all countries involved in the sale of any Goods or the resale of the Goods, including but not limited to those of the United States of America. You assume all responsibility for shipments of Goods requiring any government import clearance.

7. Inspection and Acceptance. Goods are accepted by you unless we receive written notice to the contrary specifying the nonconformance within five (5) days of your receipt of Goods. We reserve the right to examine any Goods you claim are nonconforming. We may impose charges to reimburse us for our costs if we find your claim is unsupported, or for reprocessing conforming Goods. No Goods will be returnable to us unless we agree the Goods are nonconforming, you have received our written consent and complied with our return material authorization. If you timely notify us of any nonconforming Goods and we confirm that such Goods are nonconforming, we will, in our sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by you in connection therewith. **THE FOREGOING SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR ANY GOODS DELIVERED TO YOU THAT WE CONFIRM ARE NONCONFORMING GOODS.**

8. Quantities. The quantity of Goods as recorded by us on dispatch from our place of business is conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence proving the contrary. If we deliver to you a quantity of Goods of up to five percent (5%) more or less than the quantity specified in your Order, you shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the unit price for such Goods multiplied by the quantity of Goods actually delivered (before taxes, duties and other governmental assessments). Our liability for non-delivery of the Goods shall be limited to providing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

9. Limited Product Warranty.

A. Goods. We warrant that Goods conform to our published specifications in all material respects at the time of delivery. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 9.A, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, EQUITY, CUSTOM, ORAL OR WRITTEN STATEMENTS FROM US, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES) ARE HEREBY SUPERSEDED, EXCLUDED AND DISCLAIMED.**

B. Remedy. We shall not be liable for a breach of the warranty in Section 9.A unless (i) you give written notice of the nonconforming Goods, reasonably described, to us within five (5) days of the time when you discover or ought to have discovered the nonconforming Goods; (ii) we are given a reasonable opportunity after receiving the notice to examine the Goods; and (iii) we verify your claim that the Goods are nonconforming. If you timely notify us of any nonconforming Goods and we confirm that such Goods are nonconforming, we will, in our sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by you in connection therewith. **THE REMEDIES SET FORTH IN SECTION 9.B SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 9.A.**

10. Intellectual Property Rights. You shall not obtain any rights or interests in any patent, copyright, proprietary right or confidential know-how, trademark or process owned by us or any other party. Any and all intellectual property rights, including rights of patent, copyright and trademark, in any reports, drawings, documents, specifications, calculations, confidential know-how, materials, or processes (the “Intellectual Property Rights”) owned or created by us and used or embodied in the Goods shall remain our sole property. Any and all Intellectual Property Rights developed by us in the provision of Goods shall belong to us. Any and all right, title or interest that you or any other party may have or obtain in or to our Intellectual Property Rights is hereby assigned to us and you shall take, or cause to be taken, all necessary or appropriate actions to vest such Intellectual Property Rights in us.

11. Indemnity.

A. Your Obligation to Us. We shall defend, indemnify and hold you, your affiliates, and the respective officers, directors, employees and agents of each harmless from and against any and all losses, liabilities, claims, actions, damages, interest, expenses, awards, penalties, fines, settlements, costs and judgments of any kind, including reasonable attorneys’ fees, and the costs of enforcing any right to indemnification under this Section 11 (collectively, “Losses”) incurred by any Indemnified Party (defined below) arising out of or related to bodily injury or property damage to any third-party to the extent such injury or damage is the result of our failure to manufacture such Goods to meet our published specifications. With respect to the foregoing indemnity, the Goods at issue must be confirmed as non-conforming to our published specifications by us through examination. In addition, we shall defend, indemnify and hold you, your affiliates, and the respective officers, directors, employees and agents of each harmless from and against any and all Losses incurred by any Indemnified Party arising out of any third party claim that the Goods infringe any patent, trade secret, trademark, copyright, or other proprietary interest to the extent such Goods constitute part of our stock products. The parties recognize that you have established the specifications for Goods that do not constitute part of our stock products that may be supplied hereunder in the sense of UCC Section 2-312 and you assume any liability attendant thereto. You shall reasonably cooperate with us in the defense of such claim or action. The foregoing indemnity states your sole and exclusive remedy and our exclusive liability to you for third party claims regarding bodily injury, property damage and intellectual property infringement.

B. Your Obligation to Us. You shall defend, indemnify and hold us, our affiliates, and the respective officers, directors, employees and agents of each harmless from and against any and all Losses arising out of any third-party claim alleging any bodily injury or property damage to a third party alleged to have been caused by the Goods, except to the extent that such injury or damage was the result of Goods not being manufactured to meet our published specifications. In addition, you shall defend, indemnify and hold us, our affiliates, and the respective officers, directors, employees and agents of each harmless from and against any and all Losses incurred by any Indemnified Party arising out of any third party claim that the Goods do not constitute part of our stock products infringe any patent, trade secret, trademark, copyright, or other proprietary interest. We shall reasonably cooperate with you in the defense of such claim or action.

C. Indemnification Process. Any party entitled to indemnification under this Agreement (“Indemnified Party”) shall, promptly after the receipt of notice of the commencement of any claim or the receipt of a written threat of any claim against such Indemnified Party in respect of which indemnity may be sought from an indemnifying party (“Indemnifying Party”) under this Agreement, promptly notify the Indemnifying Party in writing of the commencement thereof. The omission of any Indemnified Party to so notify the Indemnifying Party of any such claim shall not relieve the Indemnifying Party from any liability which it may have to such Indemnified Party, and only to the extent that, such omission prejudices the Indemnifying Party’s defense of such claim. In case any such claim shall be brought against any Indemnified Party or any Indemnified Party receives a written demand for monetary or equitable relief, the Indemnifying Party shall be entitled to assume the defense thereof at its own expense, with counsel satisfactory to such Indemnified Party in its reasonable judgment; provided, however, that any Indemnified Party may retain separate counsel to participate in such defense at its own expense. The Indemnifying Party agrees that it will not, without the prior written consent of the Indemnified Party, settle, compromise or consent to the entry of any judgment in any pending or threatened claim relating to the matters contemplated hereby (if any Indemnified Party is a party thereto or has been actually threatened to be made a party thereto) without the prior written consent of the Indemnified Party, which consent shall not be unreasonably conditioned, withheld or delayed.

12. Force Majeure. We shall be excused from performance hereunder for any period, and to the extent, that we are hindered or prevented from performing pursuant hereto, in whole or in part, as a result of delays caused by you or events beyond our reasonable control, which events may include, without limitation, (i) acts of God, fire, storm, flood, earthquake, or explosion; (ii) war, invasion, hostilities, terrorist threats or acts, acts of the public enemy, sabotage, riots, or other civil disturbances; (iii) strikes, labor disputes, work slowdowns or stoppages; (iv) transportation emergencies or blockades; (v) shortages of materials, power or transportation facilities; (vi) prolonged break-down of transport, telecommunication, natural gas or electric power, or similar public infrastructure; or (vii) court injunctions, acts, regulations or other requirements of federal, state, county, municipal, or local governments or branches, subdivisions or agencies thereof. In the event of nonperformance occasioned by any of the foregoing circumstances or conditions, the time for performance shall be extended to the extent of such delay. Such nonperformance shall not be a default hereunder or a ground for termination hereof and shall not excuse you from your payment obligations hereunder or extend the time for such payment.

13. Termination and Cancellations.

A. Your Default. If you fail to pay any amount when due under this Agreement, have not otherwise performed or complied with any of these Terms, in whole or in part, or become insolvent, file a petition for bankruptcy or commence or have commenced against you proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, we may cancel or suspend further deliveries or terminate the Agreement without affecting any contractual, legal or equitable rights or remedies that we may have. Without limiting our remedies, we will be entitled to cancellation charges for finished Goods and work in process which we commenced to reasonably meet the delivery schedule, as well as to quantity price adjustments reflecting volume pricing quoted based on quantities ordered but cancelled due to your default, and all costs, direct and indirect, incurred or committed and not recoverable, plus prorated anticipated profits. Continued shipment of Goods after your default will not constitute a waiver of our rights or remedies for the default.

B. Your Request for Return/Cancellation. You may not return Goods or cancel any part of an Order without our prior written consent. We may, at our option, accept or reject your request to return Goods or cancel your Order. If we accept your request for return of Goods, return freight shall be arranged and tendered by you, and all returns shall be accompanied by a return material authorization number, which number must be presented at the return facility determined by us and you will pay us a restocking fee in an amount reasonably determined by us in our sole discretion.

14. Limitation of Liability.

A. In General. TO THE FULLEST EXTENT PERMITTED BY LAW AND INDEPENDENT OF ANY OTHER PROVISION OF THE AGREEMENT, IN NO EVENT WILL WE BE LIABLE, WHETHER IN CONTRACT, WARRANTY, REPRESENTATION, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), STRICT LIABILITY, INDEMNITY, CONTRIBUTION, OR OTHERWISE, FOR LOSS OF PROFIT OR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSS, DAMAGE, COST OR EXPENSE OF ANY KIND WHATSOEVER, HOWSOEVER CAUSED, OR ANY LOSS OF PRODUCTION, LOSS OF CAPITAL, LOSS OF REVENUES, CONTRACTS, BUSINESS, COST OF REWORK, LOSS OF GOODWILL OR ANTICIPATED SAVINGS, WASTED EXPENSES, OR WASTED MANAGEMENT TIME, EVEN IF WE HAVE BEEN ADVISED OF THEIR POSSIBILITY OR THEY ARE FORESEEABLE.

B. Aggregate Limit of Liability. OUR TOTAL AGGREGATE LIABILITY ON ALL CLAIMS, WHETHER IN CONTRACT, WARRANTY, REPRESENTATION, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), STRICT LIABILITY, INDEMNITY, CONTRIBUTION, OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS.

C. Allocation of Risk. You acknowledge and agree that the allocation of risk contained in these Terms is reflected in the price of the Goods and is reasonable in all the circumstances having regard to all relevant factors, including the parties’ bargaining position, and your ability to rely on your own insurance arrangements and resources to bear or recover any costs or damages incurred for which we are not liable.

15. Dispute Resolution

A. Negotiation. The parties will negotiate in good faith to resolve any dispute regarding this Agreement. If such negotiations and meetings do not resolve the dispute within sixty (60) days of written communication of the dispute, then each party shall nominate one senior officer as its representative. These representatives shall meet to attempt to resolve such dispute. If the parties’ senior officers or representatives are unable to resolve the dispute within thirty (30) days, then either party may elect to resolve the dispute in accordance with Section 15.B hereof.

B. Arbitration. All disputes involving this Agreement which are not resolved in accordance with Section 15.A hereof shall: (i) if the amount in dispute is less than One Million Dollars (\$1,000,000.00) in the aggregate, be submitted to a single arbitrator selected in accordance with and operating under the then existing Commercial Arbitration Rules of the American Arbitration Association; or (ii) if the amount in dispute is greater than or equal to One Million Dollars (\$1,000,000.00) in the aggregate, be submitted to a panel of three (3) arbitrators selected in accordance with and operating under the then existing Commercial Arbitration Rules of the American Arbitration Association. In the event the amount in dispute is greater than or equal to One Million Dollars (\$1,000,000.00), each party shall choose one (1) arbitrator, and the third arbitrator shall be chosen by the two (2) arbitrators selected by the parties. The location of the arbitration proceedings shall be in Toledo, Ohio. The written decision of the arbitrator(s) shall be final and binding and convertible to a court judgment in any court of competent jurisdiction. The existence, subject, evidence, proceedings and ruling resulting from the arbitration proceedings (“Arbitration Proceedings”), as well as all documents, records, information and other materials (“Arbitration Materials”) submitted in the arbitration shall be deemed confidential information. Except as may be (i) necessary in connection with an application to a court for preliminary injunction, (ii) necessary in connection with a judicial challenge to an award or its enforcement, (iii) required by court order, or (iv) necessary to confirm, vacate or enforce an arbitration ruling or award, the Arbitration Proceedings shall not be disclosed by a party without the written consent of the other party and Arbitration Materials shall not be disclosed without the written consent of the party submitting the Arbitration Materials. Each party will bear its own costs and expenses with respect to any such arbitration and one-half of the fees and expenses of the arbitrators. The arbitrators shall have no authority to vary the terms of the Agreement between the parties, to examine issues left to the discretion of either party, or to consider any matter not submitted to arbitration as prescribed herein. Other than those matters involving injunctive relief or any action necessary to enforce the final award of the arbitrators, the parties agree that the provisions of this Section 15.B are a complete defense to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any dispute arising from or related to this Agreement. Nothing in this Section 15.B prevents a party from exercising their right to terminate this Agreement or from seeking from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party or any judgment on the award of such arbitration.

16. General Terms.

A. Nondisclosure of Trade Secrets and Confidential Information; No License. You agree to maintain the secrecy of and not to disclose, without our express written consent, any trade secrets or non-public, confidential or proprietary information which you receive from us. All intellectual property rights in the Goods remain vested in us or our licensors and the sale of Goods to you shall not change this position. The Goods are offered for sale and are sold subject to the following conditions: (i) you shall not (nor permit others to) manufacture, reverse engineer, create derivative works based on the whole or any part of the Goods, adapt, modify, duplicate or otherwise copy or reproduce any of the Goods without obtaining our prior express written permission. Upon our request, you shall promptly return all documents and other materials received from us and any copies thereof. We shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (i) in the public domain; (ii) known to you at the time of disclosure; or (iii) rightfully obtained by you on a non-confidential basis from a third party.

B. Assignment. We may assign our rights and delegate our obligations under the Agreement. You may not assign your rights or delegate your obligations without our prior written consent; provided, however, that any such assignment will not relieve you from your obligation to perform. Any purported assignment or delegation in violation of this Section is null and void. Except as indicated in this Section 16.B, the Agreement will inure to the benefit of the respective parties, their successors and assigns.

C. Notices. Notices required or permitted by the Agreement must be in writing and signed on behalf of the notifying party, addressed to the receiving party at the address set forth in the Agreement, and sent by courier, certified mail, or personal delivery. Notices will be effective on receipt by the party to whom the notice is given.

D. Business Relationship. In providing such Goods to you, we have acted only as an independent contractor and under no circumstances shall we be deemed to be in any relationship with you carrying with it fiduciary or trust responsibilities, whether through partnership or otherwise. Unless otherwise specified herein, we have the sole right and obligation to supervise, manage and direct the provision of all Goods covered hereby. We do not undertake to perform any of your obligations, whether regulatory or contractual, or to assume any responsibility for your business or operations. No rights or benefits are hereby conferred upon any third party, including, without limitation, any of your employees, customers, business associates, creditors or affiliates.

E. Modifications and Waiver. The Agreement may only be amended or modified in a writing that specifically states that it amends this Agreement and is signed by an authorized representative of each party. No waiver by us of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by us. No failure or delay by us to assert any rights or remedies arising from a breach shall be construed as a waiver or a continuing waiver of such rights and remedies, nor shall a failure or delay to assert a breach be deemed to waive that or any other breach.

F. Severability. Any provision of this Agreement that is invalid, illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality, prohibition or unenforceability without invalidating the remaining provisions hereof, and any such invalidity, illegality, prohibition or unenforceability of any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

G. Governing Law; Venue; Waiver of Jury Trial; Dispute Resolution. The Agreement and all matters arising out of or relating to this Agreement, will be governed, construed and enforced according to the laws of the State of Ohio without regard to any choice or conflict of law principles, provisions or rules (whether of the State of Ohio or any other jurisdiction). The applicability of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and shall not apply to this Agreement. The federal courts of the United States of America located in the city of Toledo, Ohio or the courts of the State of Ohio located in Wood County, Ohio shall have exclusive jurisdiction to adjudicate any dispute arising out of the Order or the Agreement and you hereby expressly consent to the exclusive jurisdiction of such courts in any such suit, action or proceeding. You hereby expressly consent to service of process being effected upon you by registered mail sent to your address specified in the Agreement. We and you, each irrevocably and unconditionally, waive the right to trial by jury in any proceeding to which we are parties involving any matter in any way arising out of, related to or connected with the Order or the Agreement.

H. Captions; References. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. Reference herein to sections and subsections without reference to the document in which they are contained are references to this Agreement.

I. Survival. Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15 and 16 shall survive termination or expiration of this Agreement for any reason.