

## TERMS AND CONDITIONS OF SALE

1. Taxes, Tariffs, Duties and Other Fees. Any sales, use, excise, license, import and other taxes, and any tariffs, duties, clearance fees, customs fees, or other fees that are assessed, required, imposed, or charged in connection with this transaction, whether or not the law imposing the taxes, tariffs, duties, or fees is now in effect, will be in addition to the purchase price under this agreement and must be paid by Buyer. If Seller is required to pay any tax, tariff, duty, or fee, Buyer shall reimburse Seller for the payment upon presentation of invoice.
2. Delivery. Seller does not guarantee a definite date for performance or delivery of Goods, but will endeavor to have the Goods available for delivery as near as possible to the date specified. If Seller's performance is delayed by reason of pandemic, quarantine, fire, accident, explosion, labor dispute, work conditions, default of its subcontractors or suppliers, transportation difficulties or delays, accidents to machinery or equipment, acts of God, government or military authorities, war, insurrection, riot, civil unrest, or terrorism, or any other causes beyond Seller's reasonable control, Seller will have such additional time to perform as may be reasonably necessary under the circumstances. In no event will Seller be liable for late completion or delivery unless otherwise agreed. Buyer shall inspect the Goods immediately upon receipt, count and verify the accuracy of the shipment, and promptly notify Seller in writing of any visible defects, shortages or spillages. Risk of loss, casualty or damage to the Goods passes to Buyer as soon as Seller delivers the Goods to the carrier for shipment. Buyer shall identify and document any loss or damage directly to the carrier.
3. Purchase Money Security Interest. If Seller, in its discretion, extends credit to Buyer, accepts payment by bank draft, or otherwise ships the Goods without payment of the full purchase price in immediately available funds, then Seller retains and Buyer hereby grants Seller a first priority purchase money security interest in the Goods and all accessions, proceeds (including insurance proceeds), and products of the Goods, whether cash or non-cash (including accounts receivable generated by any sale of the Goods) (collectively, the "Secured Property"). Buyer represents and warrants that the Secured Property will be located only at the address to which Buyer has instructed Seller to ship the Goods. Buyer shall promptly notify Seller in writing of any change in the location of any Secured Property, or the establishment of any new place of business where the Secured Property will be located. Seller shall retain its security interest in the Secured Property until Buyer has paid the full purchase price and all other financial obligations under this agreement. Buyer shall execute such financing statements as Seller reasonably requests to perfect, preserve and protect Seller's security interest in the Secured Property. Buyer hereby authorizes Seller to act as its attorney-in-fact to take any act to perfect or preserve Seller's security interest in the Secured Property, including the execution of financing statements on behalf of Buyer. The security interest granted under this paragraph will terminate without further action by either party upon Seller's receipt of all moneys due Seller under this agreement, including any amounts due under sections 1, 7 or 8.
4. Installation. Unless otherwise specified in this agreement, Seller has no obligations, responsibilities or liabilities with respect to the installation of any Goods. BUYER HEREBY ACKNOWLEDGES THAT SELLER WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DELAY IN THE INSTALLATION OF ANY GOODS BY ANY THIRD PARTY, OR FOR ANY DAMAGE, INJURY, CLAIM OR LIABILITY ARISING FROM ANY ALLEGED NEGLIGENCE, STRICT LIABILITY, OR MISCONDUCT ARISING FROM THE INSTALLATION OF ANY GOODS BY ANY THIRD PARTY.
5. Disclaimer of Warranties.
  - (A) Buyer will be entitled to any warranties made by the manufacturer with respect to any of the Goods. SELLER DOES NOT WARRANT OR GUARANTEE PERFORMANCE OF ANY MANUFACTURER'S WARRANTIES. Buyer acknowledges that Seller does not manufacture any of the Goods and that Seller does not modify, change, improve, or otherwise alter any of the Goods before delivery to Buyer.
  - (B) SELLER MAKES NO WARRANTY CONCERNING THE PHYSICAL PROPERTIES OF THE GOODS, INCLUDING DURABILITY AND RESISTANCE TO DETERIORATION. SELLER HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED BY STATUTE OR CUSTOM OF THE TRADE OR OTHERWISE, WHETHER AS TO QUALITY, CONDITION, PERFORMANCE, MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR OTHERWISE. SELLER WILL HAVE NO LIABILITY TO BUYER, BUYER'S CUSTOMERS, OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR OR IN RESPECT OF ANY LOSS OR DAMAGE RESULTING FROM OR ARISING OUT OF THE GOODS OR ANY DEFECT THEREIN OR THE SUPPLY, USE, OR DESIGN THEREOF.
6. Exclusion of Consequential and Incidental Damages. IN NO EVENT WILL SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, BUSINESS INTERRUPTION AND LOST DATA) SUFFERED BY BUYER, ITS CUSTOMERS, OR ANY OTHER PERSON ARISING OUT OF THE GOODS OR ANY DEFECT THEREIN OR THE SUPPLY, USE, OR DESIGN THEREOF, EVEN IF CAUSED BY SELLER'S NEGLIGENCE, INCLUDING ANY BREACH OF ANY OBLIGATION IMPOSED ON SELLER UNDER THIS AGREEMENT.
7. Indemnity. Buyer shall indemnify and defend Seller against and hold Seller harmless from all claims, demands, losses, liabilities, costs and expenses (including attorney fees and disbursements) which Seller may suffer or incur arising out of any violation of this agreement by Buyer or any use of the Goods.
8. Additional Payment Terms. Unless otherwise specified in this agreement, Buyer shall pay for all Goods before shipment by Seller in U.S. dollars by cash, check, credit card, wire transfer, ACH debit, or other terms acceptable to Seller. Buyer shall pay Seller a one-time late fee of \$100.00 plus a finance charge of 2% per month (or the highest rate allowed by law, whichever is lower) on any payment that Seller does not receive by its due date (including checks or drafts returned unpaid by the drawee) beginning on the date payment was due. Buyer shall pay Seller a returned check fee of \$50.00 each time a check or draft drawn by Buyer is returned unpaid by the drawee. Nothing in this paragraph obligates Seller to accept any payment after the due date or to extend credit to Buyer.

9. **Buyer's Acknowledgment.** Buyer acknowledges that the limitation of liabilities and remedies, disclaimer of warranties, and disclaimer of liability in this agreement apply regardless of whether Buyer has accepted any Goods under this agreement. Buyer acknowledges that Seller has set its prices and entered into this agreement in reliance upon the limitation of liabilities and remedies, disclaimer of warranties, and disclaimer of liability in this agreement, and that the intended allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss) forms an essential consideration and basis of the bargain between the parties.
10. **Notices.** All notices, requests, demands and other communications required or permitted under this agreement must be in writing, addressed as provided on the first page, made by (i) personal delivery, (ii) certified mail, postage prepaid, return receipt requested, or (iii) overnight delivery service with proof of delivery, and will be effective upon receipt or refusal thereof. Any notice sent by certified mail as provided in this paragraph, if returned unclaimed, may be re-sent by ordinary mail, postage prepaid, and will be effective seventy-two hours after deposit in the U.S. mail.
11. **Modification.** This agreement may be modified or amended only by a written instrument that specifically refers to this agreement, recites that an amendment or modification is being made, and is signed by both parties.
12. **Binding Effect.** The provisions of this agreement are binding upon and will inure to the benefit of each party and its respective heirs, legal representatives, successors and assigns.
13. **Entire Agreement.** This agreement constitutes the entire agreement and understanding between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, understandings, course of dealing, or course of performance, whether written or oral, relating to the same subject are superseded by and merged into this agreement. All exhibits and schedules are incorporated into this agreement by this reference.
14. **Express Agreement.** The parties acknowledge that their business relationship is based solely upon this agreement and agree that it should be enforced according to its express provisions. The language of this agreement is to be construed according to its plain meaning and not strictly against a party because it drafted the agreement. Neither party intends or expects that either party's rights or obligations in this agreement will be defined or determined to be other than as expressly written, or that additional obligations will be imposed on either party that it has not expressly assumed in writing.
15. **No Waiver.** The failure of either party to insist in any one or more instances upon performance of any provision of this agreement or to enforce any of its rights under this agreement is not, and may not be construed as, a continuing waiver of any provisions or the relinquishment or abandonment of any rights, all of which remain in full force and effect. No single or partial exercise by either party of any right or remedy precludes another or further exercise of the right or remedy, or the exercise of any other right or remedy. No waiver is, or may be construed as, a continuing waiver or a waiver of any other breach of any other provision of this agreement.
16. **Waiver of Jury Trial.** EACH PARTY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION, WHETHER AT LAW OR IN EQUITY, FILED BY EITHER PARTY.
17. **Mediation.** If a dispute arises between the parties that cannot be settled through negotiation, the parties shall first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to litigation or other dispute resolution procedure. The mediation proceedings are to take place at the American Arbitration Association location nearest Seller's principal place of business (presently Milford, Ohio).
18. **Governing Law.** The laws of the State of Ohio govern all aspects of this agreement.
19. **Jurisdiction and Venue.** Any action filed by either party against the other in any court may be brought only in courts located in the county or federal district in which Seller's principal place of business is located (presently Clermont County, Ohio and the Southern District of Ohio, Western Division, in Cincinnati, Ohio). Each party hereby submits to the jurisdiction of these courts and waives any defense of lack of personal jurisdiction. Venue is proper in any of these courts and each party hereby waives any right to transfer or change the venue.
20. **Severability.** If any provision of this agreement is held to be illegal, invalid or unenforceable in any respect, that term or provision will be deemed to be modified to the extent necessary to permit its enforcement to the maximum extent permitted by applicable law, and the remainder of this agreement will not be affected.
21. **Definitions.** In this agreement, the word "**including**" is to be construed to include the words "without limitation," and the word "**person**" includes a corporation, limited liability company, partnership of any kind, joint venture, unincorporated association, estate, trust, charitable organization, government, governmental body and agency, commission, and any other entity and organization, as well as an individual.