

General Terms and Conditions of Sale

- 1) Applicability.
 - a) These general terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") by **SHAPES UNLIMITED, INC.** ("Seller") to the purchaser of the Goods ("Buyer"). 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 (a "Contract"), the terms and conditions of said Contract shall prevail to the extent the Contract has terms and conditions that are in addition to or are inconsistent with these Terms.
 - b) The Contract, together with any accompanying quotation, confirmation of sale or invoice and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The Buyer acknowledges and agrees that any of Buyer's general terms and conditions of purchase contained in any purchase order or any other documents issued by the Buyer (excluding specification of the Goods ordered, quantities and date and manner of delivery subject to paragraph 2 below) regardless of when or in what manner Buyer has submitted such terms, are not part of the Agreement nor will they be binding upon Seller, and any such terms of the Buyer are hereby expressly rejected by the Seller (with the exception of Buyer's specification of the Goods ordered, quantities and date and manner of delivery, subject to paragraph 2 below). If the Buyer has not agreed to these Terms in the Contract, then the Buyer's acceptance of these Terms shall be conclusively established by the issuance of a purchase order, and Buyer's acceptance is specifically limited to these Terms, and the Seller objects to any new terms or conditions set forth in any document sent by the Buyer. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. No course of dealing, usage of trade or course of performance shall supplement or explain any term, condition of these Terms.
 - c) All purchase order(s) must be submitted to Seller by e-mail or by any electronic order management system implemented by the Seller, if any. Telephone orders or revisions to purchase order made by telephone will not be effective and will not be valid.
- 2) Delivery.
 - a) The Goods will be delivered as follows:
 - i) If there is a Contract setting forth minimum lead times and/or order delivery dates, then as set forth in that Contract;
 - ii) If there is no Contract, then for in stock Goods, within a reasonable time after the receipt and acceptance of Buyer's purchase order; or
 - iii) For Goods out of stock, within a reasonable time after the Seller's receipt of shipment of the backordered Goods after Seller's acceptance of Buyer's purchase order.
 - b) Seller shall not be liable for any delays, loss or damage in transit of any Goods and any damage to any delivered Goods shall be required to be set forth in the Bill of Lading.
 - c) Unless otherwise agreed in a Contract or in an accepted purchase order, all Goods shall be delivered FOB Seller's facility located at 13001 Mahoning Avenue, North Jackson, Ohio 44451 ("Seller's Facility"). Buyer shall take delivery of the Goods within three (3) days of Seller's written notice that the Goods are available for pickup. In the event that the Contract or an accepted purchase order provide for a different destination for shipment (the "Delivery Point") the Buyer shall arrange for receipt of delivery at the Delivery Point within ____ days of Seller notifying the Buyer the Goods are prepared for delivery. All deliveries shall be made using Seller's standard methods for packaging and shipping such Goods. Buyer shall be responsible for all unloading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.
 - d) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units of Goods shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
 - e) If for any reason Buyer fails to pick up Goods within the required time period under (c) above for Goods that are FOB Seller's Facility or fails to arrange shipment or to provide necessary instructions, documents, licenses or authorizations within the time period required by (c) above for Goods to be shipped to a Delivery Point, then: (i) at Seller's election, Seller may transfer risk of loss to the Goods to Buyer by written notice to the Buyer; and (ii) the Seller may, at its option, store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage charges at the rate of \$_____ and insurance; or (iii) the Seller may cancel and terminate the purchase order and sell the Goods to a third party. Buyer acknowledges that the Seller is a lost volume seller, as defined in the uniform commercial code, and

therefore if a purchase order is terminated due to the Buyer's failure to take delivery, the Buyer shall be responsible for a 15% restocking charge and the lost profit on the sale to the Buyer. In the event that Seller elects to store Goods under this paragraph due to the Buyer's failure to take delivery, the Seller shall not be responsible for any damage or deterioration that occurs during such storage.

- f) Buyer shall bear all costs, insurance premiums, freight, taxes (including without limitation any manufacturer's, occupation, use, sales, ad valorem or excise tax, customers clearing fees, duties, inspection or testing fees and all other charges or expenses incurred with respect to the importation, transportation, use and purchase of the Goods. Seller may include any of the foregoing in its invoice to the Buyer and Buyer shall pay or reimburse Seller pursuant to any such invoice upon demand for any such charges that Seller paid in advance. If the Buyer is exempt from any taxes, the Buyer shall furnish all applicable certificates of exemption to Seller, and absent Seller's receipt of current exemption certificates, Seller reserves the right to collect applicable taxes.
- g) The delivery date(s) provided by Seller are approximate only. Seller shall use commercially reasonable efforts to ship the Goods within the time promised, but does not guarantee to do so, and assumes no liability for not doing so. Time for delivery is not of the essence and shall not be made so by the service of any notice.
- h) Seller shall not be liable in damage for, nor demand to be in default by reason of, any failure to deliver or delay in delivery due to any cause beyond its reasonable control, including but not limited to, delays caused by fire, the elements, war, labor difficulties, interruptions or shortage of transportation, inability to obtain supplies or any other cause that interferes with Seller's production facilities or those of its sources of supply. Each order is made subject to all present and future government laws, orders, regulations or restrictions affecting or limiting the supply of materials or the production or delivery of materials or products. During any period in which any of the contingencies described above exists, Seller will allocate deliveries of its products among its customers in any manner which it determines, in its sole discretion, to be fair and reasonable.

3) Non-Delivery.

- a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- b) Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received.
- c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4) Quantity. If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the sales confirmation provided by Seller to Buyer (the "Sales Confirmation"), Buyer 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 price set forth in the Sales Confirmation adjusted pro rata.

5) Shipping Terms. Seller shall make delivery in accordance with the terms on the face of the Sales Confirmation. All shipping terms shall have the meaning set forth in the Uniform Commercial Code for domestic sales or in INCOTERMS™ 2020, as published by the International Chamber of Commerce, for international sales.

6) Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods either FOB Seller's Facility or at the Delivery Point, as applicable. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ohio Uniform Commercial Code. Seller reserves the right, and the Buyer hereby authorizes Seller, to file such appropriate financing statements to perfect its security interest in the Goods, and the Buyer shall execute any such statements or other documentation necessary to perfect Seller's security interest in the Goods.

- 7) Amendment, Modification & Waiver. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party. The failure or refusal of Seller to insist upon strict performance of any provision of the Contract, accepted purchase order or these Terms, and no delay or omission on the part of the Seller in exercising any right, shall operate as a waiver of such rights or any other right or remedy, nor shall such delay or omission be construed as a custom, course of performance or course of dealing.
- 8) Inspection and Rejection of Nonconforming Goods.
 - a) Buyer shall inspect the Goods within three (3) days of delivery for damages apparent from inspection, or within seven (7) days of delivery for latent defects not reasonably observable upon a thorough inspection, except for bundled quantities purchases of components of a full truckload or more. For such bundled components purchased in a full truckload, Buyer will have ninety(90) days from the date of delivery to identify and notify Seller of any latent defects not readily observable by thorough inspection. Each such period, as applicable, shall be referred to as the "Inspection Period."
 - b) Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as defined herein) during the applicable Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller, and Buyer's failure to give such a notice in the time required shall constitute an irrevocable acceptance of the Goods. Buyer expressly waives any claim arising out of Goods that have been accepted under this paragraph. **"Nonconforming Goods"** means only the following: (i) Goods shipped are different than identified in Buyer's purchase order; or (ii) Goods' label or packaging incorrectly identifies its contents. For Goods that have been shipped by Seller, the Buyer will be responsible to note any damages from shipment on the applicable Bill of Lading. For Goods picked up by the Buyer's carrier, the Buyer's carrier will be responsible to note any apparent damages on the applicable Bill of Lading and the Buyer shall be responsible for collecting for damages in transit directly from its carrier. Buyer shall, at its own cost and expense, retain all Nonconforming Goods for a reasonable time (which shall be not less than ninety (90) days) after notifying the Seller of the defect, and shall allow the Seller or its agents or representatives access to the Goods for the purpose of inspection and shall permit Seller to take possession of all or part of the Goods for further inspection or testing.
 - c) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its 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 Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's Facility or as otherwise directed in writing by Seller. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
 - d) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
- 9) Price.
 - a) Buyer shall purchase the Goods from Seller at the price(s) (the "**Price(s)**") set forth in Seller's published price list in force as of the date of Buyer's purchase order. All prices are subject to change without notice, and Seller shall have the right to correct any mistake in pricing before or after delivery. If the Price(s) should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased price(s) were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price(s). In addition to the Prices set forth on the price list, all non-stocked lengths of the Goods shall have an upcharge per piece cut, as set forth in the Seller's price list from time to time, which is currently \$.10.
 - b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
- 10) Payment Terms.
 - a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder in US dollars by check, certified check or electronic funds transfer. Freight, insurance and other items payable by the Buyer under paragraph __ above may be invoiced by Seller separately. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily

and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, court filings fees, attorneys' fees and other court costs and litigation expenses. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof.

- b) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.
- c) Seller reserves the right to suspend offering credit to Buyer, to impose different credit terms, to refuse shipment, to stop Goods in transit, or to cancel pending orders if the Seller has a reasonable concern with Buyer's financial condition, or if Buyer's account is past due or there are unresolved disputes regarding Buyer's account.

11) Limited Warranty.

- a) **Limited Warranty** - For Lineal Purchases / Aluminum Fence and Rail Components, this limited warranty covers defects in material, as well as paint cracking, peeling and chipping for 1 year from the time of purchase. In addition, Seller warranty covers shipping and handling damage that exists at time of receipt and must be reported within 3 days of receipt of product for damage that is apparent from inspection, or within 7 days of delivery for latent defects not reasonably observable upon a thorough inspection. For Assembled Fence and Rail Products, this warranty only covers material defects in materials and workmanship of the products. Seller limited warranty covers its Assembled Aluminum Fence products against the paint cracking, peeling, chipping for 3 years from time of purchase.
- b) **Exclusions** - This warranty does not apply in marine, salty, or harsh environmental conditions. The warranty becomes invalid if the product is improperly installed, altered, misused, damaged caused by negligence, abuse, accident, mishandling, exposure to corrosive elements or by acts of God. This warranty does not cover the appearance associated with normal weathering or fading from sun. Furthermore, it does not cover damage caused by oxidation caused by airborne chemicals or by air pollution. This warranty is void if the product is exposed to the application of paint, varnish, chemicals (including lawn care chemicals), or chemical cleaning agents not approved by Seller. For product maintenance information, please reference www.shapesunlimitedinc.com.
- c) **Exclusive Remedy** - Under this warranty, the exclusive remedy for breach of this warranty is limited to the repair or replacement of the defective material on a prorated basis. For Lineal Purchases/Aluminum Fence Rail and Rail Components – 100% in year 1. Assembled Aluminum Fence and Rail Products – 100% in year 1; 75% in year 2; 50% in year 3. Reimbursement for the cost of removal and or reinstallation is not covered, and Seller will not provide such services. UNLESS OTHERWISE PROVIDED UNDER APPLICABLE LOCAL OR PROVINCIAL LAW, SELLER IS NOT RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOSS OF USE DAMAGES. THESE EXCLUSIONS APPLY EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES, AND EVEN IF THE LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. TO THE EXTENT THAT UNDER APPLICABLE LOCAL OR PROVINCIAL LAW YOU HAVE ANY BASIS FOR A REMEDY BEYOND THE LIMITED REMEDY SET FORTH ABOVE, THEN SELLER'S LIABILITY TO YOU CAN BE NO MORE THAN THE PURCHASE PRICE FOR THE GOODS.
- d) **Warranty Claim Procedure** - If the material appears to have a defect, the original customer must advise Seller for lineal purchases and/or the contractor who installed the Seller Fence and Rail Products material. To file a claim made against this warranty, Seller will first require photographs of the material in question, Sales or Invoice Order # and a written summary of the issue. If a determination cannot be made using the submitted material, Seller will dispatch, at its expense and time, a company representative to inspect the product. If it is deemed to be a condition covered under this warranty, then Seller will either make the repair or replace the covered product, subject to the obligation of the customer to pay the amount owed by the customer, if any, under the remaining percentage set forth under the Exclusive Remedy paragraph above.
- e) **Exclusive Warranty/Disclaimer of Implied Warranties/Limitation of Damages** - The above stated limited warranty constitutes the complete warranty by Seller, and is given in lieu of all other warranties, express or implied. **SELLER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** If your local, state or provincial law gives you an implied warranty, notwithstanding the disclaimer in the previous sentence, the duration of that warranty will be the same time period as the express warranties set forth in this document, unless state, local or provincial law does not allow limitations on the duration of an implied warranty. This warranty may not be modified, amended, or supplemented without written approval of Seller. No other agreement, written or implied is valid. Seller does not authorize any other person or agent to make any other expressed warranties.

f) BINDING ARBITRATION AND CLASS ACTION WAIVER IF YOU LIVE IN (OR, IF A BUSINESS, YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE UNITED STATES - Seller hopes there will never be a dispute, but if a dispute arises under this warranty, Seller agrees with you to try for 60 days, upon receipt of a Notice of Dispute, to resolve it informally. If Seller cannot resolve the issue, then any dispute over this warranty shall be decided by binding arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA"), and you agree not to sue in court in front of a judge or jury. Instead, a neutral arbitrator will decide and the arbitrator's decision will be final except for a limited right of review under the FAA. Class action lawsuits, class-wide arbitrations, private attorney-general actions, requests for public injunctions, and any other proceeding or request for relief where someone acts in a representative capacity aren't allowed. Nor is combining individual proceedings without the consent of all parties.

If you have a dispute that our customer service representatives can't resolve and you wish to pursue arbitration, you must first send an individualized Notice of Dispute indicating all the pertinent facts and relevant dates that give rise to your dispute to SHAPES UNLIMITED, ATTN: _____, to _____. This Notice of Dispute is a prerequisite to initiating any arbitration. Any applicable statute of limitations will be tolled from the date of a properly submitted individualized Notice of Dispute through the first date on which an arbitration may properly be filed under this Section.

g) Arbitration Procedure - The AAA will conduct any arbitration under its Commercial Arbitration Rules. In a dispute involving \$25,000 or less, any hearing will be telephonic or by videoconference unless the arbitrator finds good cause to hold an in-person hearing instead. Any in-person hearing will take place in Mahoning County, Ohio. The arbitrator may award the same damages to you individually as a court could. The arbitrator may award declaratory or injunctive relief only to you individually to satisfy your individual claim, but not relief that would affect non-parties. The arbitrator rules on all issues except that a court has exclusive authority: (i) to decide arbitrability, as well as formation, existence, scope, validity, and enforceability of this arbitration agreement; (ii) to decide whether the parties have complied with the pre-arbitration requirements; (iii) to enforce the prohibition on class, representative, private attorney general, or combined actions or proceedings, or public injunctive relief; and (iv) to enjoin an arbitration from proceeding if it does not comply with this warranty.

h) This warranty gives you specific legal rights, and you may also have other rights, which vary state to state. Some exclusions, limitations or consequential damages may not apply to your specific jurisdiction. It is the responsibility of the end user to know these rights in their jurisdiction. If you have any further questions regarding SHAPES Limited Lifetime Warranty, please contact Seller Customer Service at 330-726-0844.

12) Limitation of Liability.

a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**

13) Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

14) Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for three (3) days after the date of Seller's written notice of nonpayment; (ii) has not otherwise performed or

complied with any of these Terms, in whole or in part; or (iii) 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.

- 15) **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 16) **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Buyer acknowledges that the Confidential Information was developed at great cost to the Seller and is unique and valuable to the Seller, and the disclosure thereof in violation of this paragraph would cause the Seller irreparable harm for which damages would not be a sufficient remedy, and therefore that the Seller shall be entitled to injunctive relief for any violation of this Section without the filing of a bond, in addition to all other remedies available to Seller. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
- 17) **Force Majeure.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemics, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage.
- 18) **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
- 19) **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 20) **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 21) **Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.
- 22) **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in the City of Youngstown and County of Mahoning, and each party irrevocably submits to the exclusive personal and subject matter jurisdiction of such courts in any such suit, action or proceeding. All warranty claims shall be subject to mandatory arbitration as set forth in these terms.

- 23) **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- 24) **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 25) **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.
- 26) **Export Control.** Buyer shall comply with, and at Seller's request, shall demonstrate compliance with all export laws, restrictions, and regulations of the United States and any foreign agency or authority. Buyer shall not export or re-export or all the export or re-export of any Goods in violation of any such laws, embargoes, restrictions or regulations. Buyer shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the export or re-export from the United States to the Buyer or its customers in compliance with applicable laws and regulations prior to shipment. Buyer shall defend, indemnify and hold Seller harmless from and against any claims, damages, fines, liabilities, expenses (including reasonable attorneys' fees, costs of investigation and costs of defense) arising out of or in connection with violation of this paragraph.
- 27) **Reservation of Rights.** Seller expressly reserves all rights and remedies which are available at law or in equity, including but not limited to rights set forth in the Uniform Commercial Code and under state or federal law. All rights and remedies of the Seller shall be cumulative to the extent permitted by applicable law.



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