



**GENERAL TERMS AND CONDITIONS OF SALE**

**1. Acceptance.** The following standard terms and conditions are attached hereto and incorporated into all quotations, orders and purchases of Mid West Fabricating Co. ("Seller") products and services. Any quotation from Seller constitutes only Seller's proposal to buyer. Any order given to Seller, whether or not in response to a quotation, shall be subject to acceptance by Seller and to all of Seller's standard terms and conditions as listed herein. Conditions stated by buyer in a purchase order form given in response to this proposal or otherwise shall not affect Seller's quotation and shall not be binding on unless expressly agreed to in writing by Seller.

**2. Prices.** Prices are subject to change without notice. On orders for shipment within thirty days, however, prices in effect at the date of the quotation, if any, will apply unless the shipment is delayed beyond thirty days from the date of such quotation. On any order or any part of an order shipped thirty days or more after the date of a quotation, if any, whether the delay is in accordance with the terms of the order or is from any other cause whatever, prices in effect at time of shipment will apply. Before making any shipment at a price in excess of that stated in a quotation given by Seller, if any, Seller will notify buyer stating in the notice what part of the order is to be shipped at such higher price and buyer shall have 3 days from the date of receipt of the notice to cancel the part of the order to which the increased price applies. If buyer does not so cancel within 3 days of said notice, the price increase recited in the notice shall be effective and buyer shall have no further right to cancel.

**3. Taxes.** Prices do not include federal, state or local taxes, now or hereafter enacted, applicable to the goods sold, which tax or taxes will be added by Seller to the sales price where Seller has legal obligation to collect same, and will be paid by buyer unless buyer provides Seller with the proper tax exemption certificate.

**4. Terms and Method of Payment.** Where Seller has extended credit to buyer, terms of payment shall be as stated on Seller's invoice. The amount of credit may be changed or credit withdrawn by Seller at any time. Pro rata payments are due from buyer as shipments are made by Seller. If shipments are delayed by buyer, payments are due from date when Seller is prepared to make such shipments.

**5. Delivery.** The goods shall be delivered when ordered by buyer on reasonable notice to Seller, f.o.b. Seller's plant, and title thereto and liability for loss and damage in transit or thereafter shall pass to buyer upon Seller's delivery of goods to a common carrier for shipment to buyer. Claims for damages in transit must be asserted against the carrier. Within ten (10) days after receipt of shipment, buyer must report any shortage or damage not due to the carrier, otherwise claims for such shortage or damage will be deemed waived and the goods shall be deemed accepted as delivered. Shipping dates are contingent upon prompt receipt by Seller of all applicable customer specifications and customer-furnished material. Seller reserves the right to make delivery in installments and the contract shall be severable as to each such installment. Seller may in whole or in part manufacture, assemble or otherwise fulfill the order of parts at any Seller plant. Delay in delivery or other default in any installment shall not relieve buyer of its obligation to accept and pay for remaining deliveries. All claims for delay in delivery shall be deemed waived unless presented to Seller in writing within thirty (30) days after delivery of each shipment.

**6. Fulfillment.** Delivery of 5% more or less than the quantity specified herein shall constitute fulfillment of buyer's order, and buyer shall take and pay for any excess not exceeding 5%.

**7. Contingencies.** Seller shall not be responsible for any failure to perform due to causes beyond its control. These causes shall include, but not be restricted to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war or rebellion, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, labor shortages, transportation embargoes, or failure or delays in transportation, and inability to secure raw materials or failures of machinery for the manufacture of its devices, acts of God, acts of federal government or any agency thereof, acts of any state or local government or agency thereof, and judicial action, all whether foreseen or unforeseen.



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**8. Molds, Dies, Tools, Etc.** Tools, dies and other equipment furnished Seller by buyer or ordered from Seller by buyer, if any, shall be at buyer's risk and expense. Changes in molds, dies and tools made necessary by changes in specifications already accepted by Seller shall be at buyer's expense, and buyer shall assume all risk of resultant damage. Seller agrees to maintain all molds, dies and tools during their normal productive life, except that Seller's liability to do so shall be limited to a period of one (1) year after completion of the most recent production order. The normal productive life of any mold, tool or die shall also be considered to have terminated when buyer no longer accepts parts produced from such mold, tool or die because of defects caused by wear. Molds and tools furnished to Seller by buyer or ordered from Seller or its agents by buyer, if any, shall remain in the possession of Seller for six (6) months after termination of this contract and completion of the most recent production order and shall thereafter be made available for delivery to buyer. Seller shall in no way be liable for the continued existence or availability of any such mold, die or tool after expiration of a period of one (1) year after completion of the most recent production order. Buyer shall pay the costs of any mold, dies or tools furnished by Seller on buyer's demand for delivery thereof. Buyer hereby grants a lien and Seller shall have and retain the only lien on buyer's molds, dies, tools, parts, materials or other materials, goods or services (including work in process and special materials for parts ordered for buyer) for which Seller has not been paid (whether invoiced or not). If buyer's account for molds, dies, tools or parts remains unpaid for a period of ninety (90) days, Seller shall have the right to use the same to make and sell parts there from.

**9. Assistance.** If upon buyer's request Seller assists buyer in submitting suggestions concerning design, construction or composition of molded parts, Seller shall not be liable for or on account of any such suggestions made by Seller or input given by Seller, whether or not adopted by buyer in whole or in part.

**10. Limitation of Warranty, Liability, Indemnity.** Seller warrants that the goods sold hereunder shall be free from defects in workmanship and material under normal use and service (except in those cases where the materials are supplied or designated by the buyer) for a period of ninety (90) days from the date of delivery. Seller's liability for breach of warranty shall arise only upon the return of the defective parts at buyer's expense after notice to Seller of claimed breach, and Seller's only liability shall be limited to furnishing a like quantity of such parts or goods free from such defects or, at Seller's option, to refunding the purchase price for such parts or goods. Whether particular goods have a defect in material or workmanship covered by this warranty shall be determined by reference to general industry standards as in effect at the date of production of such goods by Seller. Notice to Seller of claimed defects discoverable by inspection must be given within ten (10) days after receipt of shipment. When any goods manufactured and sold hereunder are in any way assembled by Seller into a device or product, such assembly constitutes acceptance by buyer. Seller assumes no liability of any kind relative to such assembled device or product or for component parts damaged in assembly. THE FOREGOING WARRANTY AND REMEDY ARE EXCLUSIVE AND GIVEN IN LIEU OF: (I) ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND (II) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN CONTRACT OR TORT, WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE, ACTUAL OR IMPUTED. THE REMEDIES OF BUYER SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ALL OTHER REMEDIES INCLUDING WITHOUT LIMITATION INCIDENTAL, SPECIAL, COLLATERAL, LOSS OF PROFIT, DIRECT OR INDIRECT, CONSEQUENTIAL OR SIMILAR DAMAGES. Buyer indemnifies Seller, its successors and assigns from and against all losses, damages and expenses (including attorney's fees) which Seller may sustain or incur as a result of any claim of negligence, breach of warranty or strict liability in tort in connection with the use of the goods furnished hereunder, except such as may be wholly caused by the intentional misconduct or gross negligence of Seller.

**11. Patents.** When Seller has manufactured any articles in accordance with specifications or drawings furnished by buyer or when a product is made to buyer's design, buyer at its own expense will defend any suit against Seller for infringement of patents and will satisfy any final award of damages for such infringement provided Seller gives buyer notice in writing



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of any such suit for infringement, opportunity to conduct the defense thereof and assistance and cooperation in said defense. When buyer orders articles buyer is licensed to have made for buyer, buyer represents and warrants that Seller is hereby authorized to manufacture said articles under buyer's license and buyer shall be solely responsible for such royalties as may be due and for such notification to its licensor as buyer is obligated to make.

**12. Intellectual Property.** Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations hereunder shall remain the exclusive property of Seller and its licensors, as the case may be. Nothing in this Agreement shall be deemed to grant Buyer any license or any other rights in such Intellectual Property. "Intellectual Property" includes without limitation: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in progress, research and development information; and (v) all other proprietary rights relating to the foregoing.

**13. Material Repurchase.** In the event buyer cancels any part of this order for any reason, including a price increase by Seller, buyer shall nonetheless purchase from Seller all special material or parts obtained by Seller to complete buyer's order. Such materials and parts, if any, shall be invoiced to buyer by Seller at Seller's cost, including freight. This remedy of Seller shall be in addition to all other remedies available to Seller under law.

**14. Changes.** Any quotation from Seller shall not be deemed a firm offer as defined in 2-205 of the Uniform Commercial Code and is subject to change or withdrawal without notice. Unless otherwise provided explicitly herein, Buyer's order, after acceptance by Seller, shall not be subject to cancellation, change or reduction in amount, nor to any suspension by buyer of deliveries without Seller's prior written consent.

**15. Customer Supplied Items.** Materials, inserts or component parts supplied by buyer shall exceed by five percent (5%) the quantity or amount required to fill the order, and shall be delivered f.o.b. Seller's plant. Seller assumes no liability for damages to molds or parts caused by defective items supplied by buyer.

**16. Non-Waiver of Default.** Each shipment made under any order shall be treated as a separate transaction, but in the event of any default by buyer, Seller may decline to make further shipments without in any way affecting its rights under such order. If, despite any default by buyer, Seller elects to continue to make shipments, its actions shall not constitute a waiver of any default by buyer or in any way affect Seller's legal remedy for such default.

**17. Modifications of Standard Terms and Conditions.** No addition to or modification of any of the provisions upon the face or reverse of this form shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller.

**18. Miscellaneous.** This agreement is intended by the parties as a final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement and purchase. No affirmation, representation or warranty made in Seller's advertising or by any agent, employee or representative of Seller which is not specifically included herein shall be enforceable. The rights and obligations stated herein shall not be assigned or delegated by buyer without the written consent of Seller. The validity or enforceability of any provisions herein shall not affect the other provisions hereof and the terms herein shall be complied with in all respects as if such invalid or enforceability provision were omitted.

**19. Governing Law; Jurisdiction.** This agreement shall be governed by and construed and enforced in accordance with the laws of the State of Ohio without giving effect to the principles of conflicts of law. Buyer hereby irrevocably submits



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to the jurisdiction either the federal court of the Southern District of Ohio or the Fairfield County Court over any action or proceeding arising out of or relating to this agreement or the goods and agrees that all claims in respect of such action or proceeding may be heard and determined in any such court. Buyer further agrees that venue for any such action shall lie exclusively with courts sitting in the Southern District of Ohio or Fairfield County, Georgia, unless Seller agrees to the contrary in writing.

**20. Time for Bringing Action.** Any action for breach of these terms or against Seller herein must be commenced within one (1) year after the cause of action has accrued.