

OHIO FABRICATORS COMPANY
GENERAL TERMS AND CONDITIONS OF PURCHASE

1. General. These General Terms and Conditions of Purchase (these “**Terms**”) are the only terms which govern the purchase of the goods (“**Goods**”) and services (“**Services**”) by Ohio Fabricators Company (“**Buyer**”) from the seller (“**Seller**”), and shall apply to any order of Goods or Services from Seller by Buyer now or in the future. Any purchase order from Buyer (the “**Purchase Order**”) 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. This Agreement expressly limits Seller’s acceptance to the terms of this Agreement. No terms or conditions set forth in any future correspondence between Buyer and Seller shall alter or supplement this Agreement unless in a writing signed by authorized representatives of the parties. These Terms prevail over any of the Seller’s general terms and conditions of sale regardless of whether or when Seller has submitted its terms. Fulfillment of the Purchase Order constitutes acceptance of these Terms. These Terms are intended to be applicable to any Purchase Order issued by Buyer, and the parties’ entering into these Terms does not guarantee or assure Seller of any Purchase Orders or any particular Purchase Order being issued by Buyer.

2. Delivery of Goods and Performance of Services. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If no Delivery Date is specified, the Seller shall deliver the Goods within thirty (30) days of Seller’s receipt of the Purchase Order. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date. The buyer has the right to return any Goods delivered prior to the Delivery Date at Seller’s expense and Seller shall redeliver such Goods on the Delivery Date. Seller shall deliver all Goods to the address specified in the Purchase Order (the “**Delivery Point**”) during Buyer’s normal business hours or as otherwise instructed by Buyer. Seller shall pack all Goods for shipment according to Buyer’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller’s risk of loss and expense.

Seller shall provide the Services to Buyer as described and in accordance with the schedule set forth on the Purchase Order and in accordance with the terms and conditions set forth in these Terms.

Seller acknowledges that time is of the essence with respect to Seller’s obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in this Agreement.

3. Quantity. Seller shall deliver to Buyer no less than the quantity of Goods ordered, although Buyer will accept up to 10% more than the order quantity. If Seller delivers more than the 10% above the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s sole risk and expense.

4. Shipping Terms. Delivery shall be made in accordance with the terms of the Purchase Order. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence, and any other documents pertaining to the Purchase Order.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

6. Inspection and Rejection of Nonconforming Goods. Buyer has the right to inspect the Goods on or after the Delivery Date. The buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with Goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 15. Any inspection or other action by the Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. Seller shall, at Buyer’s request and Seller’s cost, sort any quantity of the Goods from which a nonconforming or defective Good was discovered.

7. Change Orders. Buyer may at any time, by written instructions issued to Seller (each a “**Change Order**”), order changes to the Goods or Services. The seller shall within seven (7) days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changes subject to the cost proposal and the terms and conditions of this Agreement. If Buyer rejects the cost proposal, Buyer, at its election, may: (i) order Seller to proceed as if the Change Order was not issued; or (ii) order Seller to proceed with the Change Order, without prejudice to Seller’s right to pursue the reasonable cost of such Change Order. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller’s compensation or the performance deadlines under this Agreement. Seller may not alter the content, specifications, performance metrics, or any other aspect of the

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Goods or Services, except as initiated by Buyer pursuant to this Section 7.

8. Price. The price of the Goods and Services is the price stated in the Purchase Order (the “**Price**”). If no price is included in the Purchase Order, the Price shall be the price set out in the Seller’s published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging and insurance. No increase in the Price is effective, whether due to increased material, labor, or transportation costs or otherwise, without the prior written consent of Buyer. The seller warrants that the Price is its lowest price made available to any buyer of substantially similar Goods or Services in comparable quantities in the three (3) months prior to and after the date of the Purchase Order. If this warranty is or becomes untrue, Seller shall automatically adjust the Price to make it true, and if applicable refund the difference to Buyer.

9. Payment Terms. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller net sixty (60) days (unless previous negotiated terms supersede this) after Buyer’s receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller or the projected value of a dispute with Seller against any amount payable by Buyer to Seller. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

10. Seller’s Obligations Regarding Services. Seller shall: (a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Goods or Services; (b) comply with all rules, regulations and policies of Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures; (c) maintain complete and accurate records relating to the provision of the Goods or Services under this Agreement, including records of the time spent and materials used by Seller in providing the Goods or Services in such form as Buyer shall approve. During the term of this Agreement and for a period of three (3) years thereafter, upon Buyer’s written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services; (d) obtain Buyer’s written consent, which shall not be unreasonably withheld or delayed, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller’s employees, to provide any Goods or Services to Buyer (each such approved subcontractor or

other third party, a “**Permitted Subcontractor**”). Buyer’s approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller’s own employees; (e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer’s written request, to enter into a non-disclosure agreement or intellectual property assignment, or license agreement in a form that is reasonably satisfactory to Buyer; (f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to supply the Goods or perform the Services; (g) ensure that all of its equipment used in the provision of the Goods or Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and (h) keep and maintain any Buyer equipment in its possession in good working order and not dispose of or use such equipment other than in accordance with the Buyer’s written instructions or authorization.

11. Warranties. Seller warrants to Buyer that all Goods will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party’s patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance, or payment of or for the Goods by Buyer.

Seller further warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and the warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer’s discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Buyer, and, if applicable, (ii) repair or re-perform the applicable Services.

12. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer’s subsidiaries, affiliates, successors and assigns and their respective members, managers,

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directors, officers, shareholders and employees (collectively, “**Indemnitees**”) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorneys and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “**Losses**”) arising out of or occurring in connection with the Goods or Services purchased from Seller, or Seller’s negligence, willful misconduct, breach of this Agreement, or any claim that the Goods or Services infringe or misappropriate any intellectual property rights of any third party. In addition to the Losses, in a claim for intellectual property infringement, Seller shall: (i) at its cost, procure a license for continued use of the Goods or Services; (ii) modify the Goods or Services so that they are no longer infringing, with Goods or Services that are as good of quality and in accordance with Buyer’s requirements; or (iii) replace the Goods or Services with Goods or Services that are not infringing and that are as good of quality and in accordance with Buyer’s requirements. Seller shall not enter into any settlement without Buyer’s prior written consent.

13. **Insurance.** During the term of this Agreement and for a period of one (1) year thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 per occurrence and in the annual aggregate with financially sound and reputable insurers. Upon Buyer’s request, Seller shall provide Buyer with a certificate of insurance from Seller’s insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with thirty (30) days’ advance written notice in the event of a cancellation or material change in Seller’s insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Seller’s insurers and Seller.

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

15. **Termination.** In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or the Seller’s delivery of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller 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, then the Buyer may terminate this Agreement upon written notice to Seller. If Buyer terminates the Agreement for any reason, Seller’s sole and exclusive remedy is payment for the Goods received and accepted by Buyer and Services accepted by Buyer prior to the termination.

16. **Waiver.** No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. 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.

17. **Confidential Information.** All non-public, confidential or proprietary information of Buyer, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, 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 purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. The buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party. Seller may disclose such confidential information of Buyer to Seller’s authorized subcontractor, provided that subcontractor has obligated itself in writing to maintain such information confidential.

18. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party’s fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (“**Force Majeure Event**”). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riots, or other civil unrest, embargoes, or industrial disturbances. Seller’s economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Seller from carrying out its obligations under this

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Agreement for a continuous period of more than fifteen (15) business days, Buyer may terminate this Agreement immediately by giving written notice to Seller.

19. Assignment. Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be voidable at the election of Buyer. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets, in which case Buyer shall be relieved of any liability hereunder.

20. 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.

21. 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 this Agreement.

22. Governing Law. All matters arising out of or relating to this Agreement shall be governed by, construed, and enforced 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.

Ohio Fabricators Company

By: _____

Its: _____

Dated: _____

Notice Address: _____

Email: _____

23. Exclusive Jurisdiction. Any dispute, 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 with jurisdiction over Coshocton County, Ohio, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such dispute, action or proceeding.

24. 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 below 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), electronic mail (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.

25. Severability. In the event any of the terms and conditions contained herein is held to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not affect any other term or condition or invalidate or render unenforceable such term or provision.

26. 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. The sections of this Agreement which are intended to survive its termination shall so survive, including but not limited to, Sections 8, 9, 10, 11, 12, 13, 14, 17, 22, and 23.

27. Entire Agreement. The Agreement constitutes the entire agreement of the parties with respect to the matters contemplated herein and cannot be modified except in a writing signed by the parties.

Seller Name

By: _____

Its: _____

Dated: _____

Notice Address: _____

Email: _____

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