

TAC Industries, Inc. Standard Terms and Conditions for Vendors

1. SCOPE: The Terms and Conditions (“T&C’s”) set forth herein shall apply to all quotations, purchase orders, acknowledgments, and/or offers, made by another individual and/or entity (“Seller”), to, accepted and/or acknowledged by TAC Industries, Inc. (“Buyer”). These T&C’s apply to all materials sold to Buyer, except to the extent the T&C’s conflict with a separate, independent Sales Agreement signed by Seller and Buyer or such terms and conditions as are required by federal law or regulation. These T&C’s apply in lieu of any course of dealing between the parties or usage of trade in the industry. These T&C’s may in some instances conflict with some of the terms and conditions affixed to the quotation or offer or other procurement document issued by the Seller. In such case, the T&C’s contained herein shall govern, and Buyer’s offer and/or acceptance of Seller’s quotations and/or offers are conditioned upon Seller’s acceptance of the terms and conditions herein, irrespective of whether the Seller accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of material ordered hereunder. Buyer’s failure to object to provisions contained in any communication from Seller shall not be deemed a waiver of the provisions herein. Any changes in the T&C’s contained herein must specifically be agreed to in writing signed by an officer of Buyer before becoming binding on either party.

2. PRICE, TAXES, ORDERS AND QUOTATIONS: Unless otherwise agreed to in writing by the parties, prices stated in quotations, purchase orders, acknowledgments, and/or offers shall remain firm and fixed as stated in the quotations, purchase orders, acknowledgments, and/or offers. In the event materials are delivered or services are performed by Seller at different costs than as shown on the purchase order, Buyer will adhere only to those prices stated in the quotations, purchase orders, acknowledgments, and/or offers. Buyer reserves the right to correct any obvious errors in specifications or purchase orders. Any order that can be cancelled and rescheduled pursuant to paragraph 6(a) is subject to a price change. In the event of a price change pursuant to this section, the adjusted invoice shall be payable as if the price therein were the original contract price. All prices provided to Buyer are inclusive of all costs associated with a given transaction, except as expressly stated otherwise.

3. DELIVERY: Unless otherwise agreed in writing, Seller must deliver products in one or more shipments and invoice each shipment separately. Buyer reserves the right to refuse material that is delivered in advance of the agreed delivery date. Unless otherwise agreed in writing, delivery time is of the essence. Buyer does not accept liability for any loss arising from delay in delivery of products.

4. PAYMENT TERMS: Unless otherwise agreed in writing, payment terms shall be net [thirty (30) days] from the date of invoice, with no exceptions. On any past due invoice, Seller may impose interest at the rate of not more than [one and a half percent (1.5%)] per month. If Buyer fails to make each payment when it is due, Seller shall notify Buyer in writing within seven (7) days of the due date passing. If Buyer fails to make payment within seven (7) days after its receipt of said notice, Seller may change or withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements in which Seller has extended credit to Buyer. Upon cancellation, Seller, as its sole remedy, may recover from Buyer as damages the difference between cost of procurement from another source (commonly referred to as “cover”) and the contract price, less expenses saved as a consequence of cancellation.

5. NON-CONFORMING DELIVERY AND RISK OF LOSS: If any material received by Buyer is damaged, or if the quantities received by Buyer do not agree with the quantities indicated on the shipping documents, or if any material does not conform with Buyer’s specifications, Buyer shall notify Seller in writing within seven (7) days of delivery and shall, within fourteen (14) days after delivery, furnish Seller detailed written information as to any damage, shortage, or nonconformance. In such event, Buyer shall afford Seller a reasonable opportunity to inspect such material or shipments. Risk of loss and title shall pass to Buyer upon delivery,

provided that such material or shipments are conforming. Seller shall retain risk of loss and title until Buyer has accepted delivery.

6. ORDER CANCELLATION – UNLESS OTHERWISE AGREED TO IN WRITING:

- a. Buyer's Cancellation for Convenience:
 - i. Buyer may cancel any order for convenience on the following terms:
 1. For standard orders, Buyer may cancel or reschedule a product without penalty if the cancellation is more than thirty (30) days from the confirmed shipping date (as specified in Seller's order acknowledgement or other document); cancellations within thirty (30) days of a confirmed shipping date must be approved in writing by an authorized agent of Seller's.
 2. For nonstandard or custom orders, Buyer may cancel or reschedule more than ninety (90) days from the confirmed shipping date, except that Buyer shall accept delivery of all such products which are completed at the time of cancellation or rescheduling, provided that Seller is unable, after diligent effort, to find a willing and able buyer and/or mitigate its losses. With respect to nonstandard or custom orders, those materials which are in the work-in-process inventory at the time of cancellation or rescheduling, shall be paid for by Buyer at a price equal to the completed percentage of the order multiplied by the price of the material, provided Seller is unable, after diligent effort, to find a willing and able buyer and/or mitigate its losses. Upon Seller's receipt of Buyer's notice of cancellation Seller shall take no further action to perform the cancelled order. Under no circumstances shall Buyer be liable or responsible for any materials manufactured or acquired by Seller or its associated third parties, after Seller receives notice of Buyer's order cancellation, provided that such materials were not then in transit.
 - b. Buyer's Cancellation for Seller's Default: Upon written notice to Seller, any order may be cancelled in whole or in part in accordance with the terms hereof, because of Seller's failure to deliver products in compliance with Buyer's order, by the confirmed shipping date (this failure hereinafter called "Default"). Cancellation by Buyer for Seller's Default, which may entitle Buyer to procurement costs, shall be effective upon Seller's failure to correct such Default within a reasonable period of time, but not less than thirty (30) days after receipt by Seller of written notice of such Default. Upon cancellation, Buyer may recover from Seller as damages the difference between cost of procurement from another source (commonly referred to as "cover") and the contract price, less expenses saved as a consequence of Seller's breach; Buyer shall also be entitled to recover from Seller, reasonable costs, fees, and expenses, including but not limited to, recovery of attorney fees, court costs and fees, and collections costs.
 - c. Seller's Cancellation: Seller shall have the right to cancel, with thirty (30) days written notice, any unfilled order in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute or becomes unable to meet its financial obligations in the normal course of business. Any order that can be cancelled or rescheduled by Buyer pursuant to paragraph 6(a) may be cancelled or rescheduled by Seller if notice is given to Buyer.
 - d. Cancellation for Price Increases: In the event any offer, quotation, estimate, forecast, or projection is greater than or equal to _____ (insert variance percentage) of the estimate, forecast, projection previously provided to Buyer by Seller ("Price Increase):
 - i. Buyer shall have the right to refuse to accept any offer or submit any purchase order without violating any term or condition of any agreement between the parties and without violating any right or expectation of the Seller, by providing written notice to Buyer within seven (7) days of receiving notice of the Price Increase.
 - ii. Buyer may revoke and/or withdraw and/or amend any accepted offer and/or purchase order submitted, provided Seller has not acknowledged receipt of said offer and/or order, or substantially performed upon the same, without violating any term or condition of any agreement between the parties and without violating any right or

expectation of the Seller by providing written notice to Buyer within seven (7) days of receiving notice of the Price Increase.

- iii. If a Price Increase persists, or is reasonably expected to persist, for at least sixty (60) days, Buyer may terminate any agreement between the parties which relates to the Price Increase, by providing written notice to Seller. Termination of any agreement pursuant to this subsection shall be effective thirty (30) days after Seller's receipt of the Buyer's notice of termination, during which period Buyer shall not be required to make any purchases.

7. COMPLIANCE WITH LAWS: Seller agrees that in the performance of any order and/or agreement with Buyer, it will comply with all requirements of all federal, state and local laws and regulations, including the Fair Labor Standards Act of 1938, the Federal Occupational Safety and Health Act of 1970, and the Federal Acquisition Regulations, if applicable. Seller further agrees to indemnify Buyer from its loss, cost, damage, or liability resulting from Seller's non-compliance.

8. PATENT INFRINGEMENT: Seller agrees to indemnify Buyer and its successors and assigns against all liability and expenses resulting from any claim of infringement of any patent in connection with the purchase, production and supply of such materials including, but not limited to, attorneys' fees and expenses incurred by Buyer in defending such a claim.

9. WARRANTY: All materials sold hereunder shall be free from defects and shall conform to Buyer's published specifications or other specifications accepted in writing by Seller for a period of one (1) year from the date of shipment of the material. The foregoing warranty does not apply to any material which has been subject to misuse, neglect, accident or modification or which has been altered in any way by Buyer so long as such subsection or alteration was not reasonably foreseeable and/or was not related to any commercially expected use of the material. Seller's obligation and liability for material failing to comply with this warranty shall include, but is not limited to, at its option, to either replace the material or to issue credit for the nonconforming material where, within fourteen (14) days of the expiration of the warranty period, (i) Seller has received written notice of any nonconformity; (ii) after Seller's written authorization, Buyer has returned the nonconforming product to Seller in substantially the same condition as it was delivered to Buyer; and (iii) Seller has determined, that the material is nonconforming and that such nonconformity is not the result of improper installation, neglect or other misuse, so long as Seller has a reasonable basis for such determination. In the event material is nonconforming, Seller shall be liable for all of Buyer's resulting reasonable costs, including lost profits, attorney's fees, penalties, or damages, whether incurred by Buyer, or any third-party with whom Buyer has any agreement relating to the material. If Seller provides nonconforming materials more than twice in a twelve (12) month period, Buyer may, in its sole discretion, terminate any agreement with Seller relating to the breached warranty, by providing written notice to Seller; termination shall be effective immediately, except as otherwise agreed to in writing by Buyer.

Except as otherwise agreed to in writing by the parties, any description of the material set forth on Seller's sales forms or any other correspondence between the parties is part of the basis of the bargain and constitutes a warranty that the material shall conform to that description. The use of any sample in connection with a sale is part of the basis of the bargain and is to be construed as a warranty that the material will conform to the sample. Except as to Buyer's expressly authorized representative(s), Buyer's employees, representatives or agents shall not have any authority to bind Buyer to any release, modification, or waiver of any warranty. Any technical advice furnished by Seller, its employees, representatives or agents with respect to the use of the material may be relied upon by Buyer, and Seller accepts that it may be liable for any such advice and representations made to, and reasonably relied on by, Buyers. Unless approved by Buyer's express authorized representative(s), Buyer shall not have any to fulfill oral purchase orders from Seller or accept delivery of any such product associated therewith.

All material shall be subject to tolerances and variations consistent with usual trade practices regarding dimensions, straightness, section, composition and mechanical properties and normal variations in surface and internal conditions and quality and shall also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods.

UNLESS OTHERWISE AGREED TO IN WRITING THE FOREGOING WARRANTY AND REMEDIES ARE NOT INTENDED TO BE EXCLUSIVE. ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL REMAIN IN EFFECT, IF APPLICABLE. BUYER DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO DISCLAIM ANY WARRANTIES WITH RESPECT TO MATERIAL SOLD OR SERVICES RENDERED, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS OF THE MATERIAL OR SERVICES FOR ANY PARTICULAR PURPOSE. BY MAKING AN OFFER TO BUYER, SELLER AFFIRMS THAT THE BUYER MAY RELY UPON THE SKILL OR JUDGMENT OF SELLER OR ANY OF ITS AGENTS, EMPLOYEES OR REPRESENTATIVES TO SELECT OR FURNISH MATERIAL FOR ANY PARTICULAR PURPOSE AND THAT SALE IS MADE WITH WARRANTY BY SELLER THAT THE MATERIAL IS SUITABLE FOR A PARTICULAR PURPOSE. SELLER SHALL PASS THIS WARRANTY TO ANY THIRD-PARTY INVOLVED IN PROVIDING THE MATERIAL TO BUYER.

10. LIMITED LIABILITY: Except as otherwise provided in these T&C's, or otherwise provided in a writing agreed to by the parties, Buyer shall not be liable for incidental or consequential damages including, but not limited to, the cost of labor, re-qualifications, rework charges, delay, lost profits, or loss of goodwill arising out of the sale, installation or use of any material sold by Seller to Buyer. If Buyer has any liability for breach of contract, breach of any implied condition, warranty or representation, the aggregate liability of Buyer to Seller shall be limited with respect to any occurrence or series of occurrences to the contractual value of the materials that are the subject of the contract between the parties.

11. INDEMNIFICATION. Seller agrees to indemnify and hold the Buyer harmless from any and all claims, liabilities, damages, taxes, fines, repayment obligations, or expenses, including court costs and reasonable attorney fees, brought by third parties for any act or omission arising from or relating to the materials or services provided, or intended to be provided, including any negligent acts or omissions by Seller or its employees, representatives, contractors, subcontractors, or agents. This indemnification clause shall survive the expiration and/or termination of an agreement between the Parties. If the subject matter of a purchase order is covered by insurance, Buyer shall be named a co-insured with respect to such subject matter.

12. LIMITATION OF ACTIONS: No action against Buyer for breach of any sales agreement, in whatever form, may be brought more than one (1) year after the cause of action accrues.

13. CONFIDENTIAL INFORMATION: Except as required by law neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any Confidential Information of the other. "Confidential Information" is defined as any information disclosed, whether orally or in writing, to Buyer by Seller. Confidential Information may include, without limitation, (i) proprietary technical information regarding Buyer, its material, products and services; (ii) the identity or other pertinent information with respect to actual or potential customers, customer contacts and sales strategies; (iii) market studies, penetration data, and other market information; (iv) sales and marketing plans, programs and strategies; (v) sales, costs and other financial data; (vi) trade secrets, know-how, designs and proprietary commercial and technical information, methods, practices, procedures, processes, and formulas with any

components or parts thereof; (vii) sources of supply for material, products, components, and services; (viii) other secret processes, formulas or methods. Buyer makes no representation or warranty as to the accuracy or completeness of the Confidential Information provided to the Recipient and nothing herein shall be deemed to obligate the Buyer to disclose any Confidential Information to the Seller. Under certain circumstances, Buyer may require Seller to execute a separate detailed Confidentiality Agreement.

14. FORCE MAJEURE: Buyer shall not be liable for any damage or penalty for delay in payment or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of the Seller, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of Buyer. The anticipated payment date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

15. NOTICES: Any notice hereunder shall be deemed to have been given if sent by prepaid first class mail to the party concerned at its last known address.

16. ASSIGNMENT: Seller may not assign or transfer any sales agreement, in whole or in part, by operation of law or otherwise, except with the Buyer's prior written consent.

17. SEVERANCE: In the event that any of these terms or conditions are determined to be unenforceable or inapplicable, such determination shall not affect the validity or enforceability of the remaining terms and conditions.

18. WAIVER: Failure by Buyer to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

19. AMENDMENT AND MODIFICATION: Neither the T&C's nor any agreement between the parties may be modified and/or amended unless put in writing and signed by all parties.

20. APPLICABLE LAW AND JURISDICTION: Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under the laws of the State of Ohio. Any legal claims brought under the T&C's or an agreement to which the T&C's apply, must be filed in a court of competent jurisdiction in Clark County, Ohio.

21. DISPUTE RESOLUTION: In the event dispute arises relating to an agreement between the parties, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute through mediation using a mutually acceptable neutral mediator qualified under Ohio law. The costs of mediation shall be borne equally by the parties to such mediation.

22. SALES TAX EXEMPTION AND IRS FORM W-9. Seller shall be responsible for providing Buyer with any applicable sales tax exemption forms and IRS Form #9.

23. AUTHORIZED REPRESENTATIVES. Buyer's expressly authorized representatives shall be:
