

TAC Industries, Inc. Standard Terms and Conditions for Customers

1. SCOPE: The Terms and Conditions (“T&C’s”) set forth herein shall apply to all quotations, purchase orders and/or offers made and/or acknowledged by TAC Industries, Inc. (“Seller”) to another individual and/or entity (“Buyer”). These T&C’s apply to all materials sold by Seller 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 purchase order or other procurement document issued by the Buyer. In such case, the T&C’s contained herein shall govern and Seller’s quotes, offers, and/or acceptance or acknowledgment of Buyer’s purchase order and/or offers are conditioned upon Buyer’s acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of material ordered hereunder. Seller’s failure to object to provisions contained in any communication from Buyer 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 Seller before becoming binding on either party. Seller shall not be required to commence work on the subject products until such time as it receives from Buyer a signed enforceable purchase order relating to such work.

2. PRICE, TAXES AND QUOTATIONS: Unless otherwise agreed to in writing by the parties, prices quoted by Seller are those current as of the date of quotation and shall be subject to change. Prices are subject to change without notice to reflect any change of Seller’s prices at the time of shipment and any increase in transportation, labor or other costs. Seller reserves the right to correct any obvious errors in specifications or prices. 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 set forth therein was the original contract price. All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product or material. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate?.

3. DELIVERY: Unless otherwise agreed in writing, Seller may deliver products in one or more consignments and invoice each consignment separately. Seller reserves the right to ship material that is not subject to cancellation in advance of the agreed shipping date. Unless otherwise agreed in writing, delivery time is not of the essence. Except as specified in 6(b), Seller 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. Payment shall be made in U.S. Currency. On any past due invoice, Seller may impose interest at the rate of [one and a half percent (1.5%)] per month. If Buyer fails to make each payment when it is due, Seller reserves the right to 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. In the event of default by Buyer, Seller shall be entitled to costs, fees, and expenses, including but not limited to recovery of attorney fees, court costs and fees, and collections costs. Seller shall retain a security interest in the material until Buyer’s final payment to Seller for the material.

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, Buyer shall notify Seller in writing within forty-eight (48) hours of delivery and shall, within seven (7) days after delivery, furnish Seller detailed written information as to any damage, shortage, or nonconformity.

In such event, Buyer shall afford Seller a reasonable opportunity to inspect such material or shipments. Failure to notify Seller in writing of any visible defects in the material or of quantity shortages within the forty-eight (48) hour period referenced above shall be deemed an unqualified waiver of any rights to return material on the basis of visible defects or shortages, subject to Buyer's rights under Section 9, below. Risk of loss and title shall pass to Buyer upon delivery and shall remain therewith until Seller's inspection confirms non-conformance. Buyer shall maintain the condition of the materials until Seller removes the non-conforming materials, which shall be within reasonable time not to exceed two (2) months, or Seller provides written instructions to the contrary.

6. ORDER CANCELLATION:

a. Buyer's Cancellation for Convenience: 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 representative of Seller and may be subject to special charges.

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. 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.

b. Buyer's Cancellation for Seller's Default: Upon written notice to Seller, any order may be canceled in whole or in part in accordance with the terms hereof, because of Seller's failure to deliver products within reasonable time of 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 only 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, as its sole remedy, 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. In no event shall these damages exceed ten percent (10%) of Seller's price for the material (not subject to cancellation under 6(a) ordered by Buyer which remain unshipped at the time of cancellation.

c. Seller's Cancellation: Seller shall have the right to cancel any unfilled order without notice to Buyer 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.

7. COMPLIANCE WITH LAWS: Buyer 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. Buyer further agrees to indemnify Seller from its loss, cost, damage, or liability resulting from Seller's non-compliance.

8. PATENT INFRINGEMENT: To the extent that material is furnished by Seller to Buyer's specifications, Buyer agrees to indemnify Seller 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 Seller in defending such a claim.

9. LIMITED WARRANTY: Except as specified below, all materials sold hereunder shall be free from defects and shall conform to Seller'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 or detrimentally impacted by environmental conditions beyond the Seller's control. Seller's sole obligation and liability for material failing to comply with this warranty shall be, 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 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.

Except for the specifications specifically referred to above, any description of the material set forth on Seller's sales forms or any other correspondence is for the sole purpose of identifying it, is not part of the basis of the bargain, and does not constitute a warranty that the material shall conform to that description. The use of any sample in connection with a sale is for illustrative purposes only, is not part of the basis of the bargain, and is not to be construed as a warranty that the material will conform to the sample. None of Seller's employees, representatives or agents have any authority to bind Seller to any affirmation, representation or warranty other than those referenced above. Any technical information furnished by Seller, its employees, representatives, or agents including, but not limited to, specifications, diagrams, drawings and instructions, with respect to the use of the material is given without charge, and Seller shall have no obligation or liability for the advice given or the results obtained, all such advice being given and accepted at Buyer's risk.

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.

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS MATERIAL. WE DISCLAIM ALL OTHER 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 PLACING AN ORDER WITH SELLER, BUYER AFFIRMS THAT THE BUYER HAS NOT RELIED 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 WITHOUT ANY WARRANTY BY SELLER THAT THE MATERIAL IS SUITABLE FOR ANY PARTICULAR PURPOSE. BUYER SHALL PASS THIS WARRANTY TO ANY THIRD-PARTY PURCHASER OF SELLER'S MATERIAL.

10. LIMITED LIABILITY: Except as otherwise provided in these T&C's, or otherwise provided in a writing agreed to by the parties, Seller 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 Seller has any liability for breach of contract, breach of any implied condition, warranty or representation, the aggregate liability of Seller to Buyer 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: Buyer agrees to indemnify and hold the Seller 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 the indemnifying party or its employees, representatives, contractors, subcontractors, or agents. This indemnification clause shall survive the expiration and/or termination of an agreement between the Parties.

12. LIMITATION OF ACTIONS: No action against Seller 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 the Seller, 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. Seller 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 Seller to disclose any Confidential Information to the Buyer. Under certain circumstances, Seller may require Buyer to execute a separate detailed Confidentiality Agreement.

14. FORCE MAJEURE: Seller shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of the Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of Seller. The anticipated delivery 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: Buyer may not assign or transfer any sales agreement, in whole or in part, by operation of law or otherwise, except with the Seller'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 Seller 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



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law. The costs of mediation shall be borne equally by the parties to such mediation.