



8950 Seward Road, Fairfield, Ohio 45011

TERMS AND CONDITIONS OF SALE AND PURCHASE

I. General Terms and Conditions

A. Terms of Agreement: The sale, shipment, delivery, and performance by Alba Manufacturing, Inc. ("Seller") for the goods covered hereunder will be subject only to and governed exclusively by the terms and conditions set forth herein.

B. Proposals and Acceptance: All proposals made by Seller are in response to Buyer's request for a quotation for a future contract. In response to any proposal from Seller, Buyer may submit a purchase order, or change order, as the case may be, to Seller. All such orders are subject to acceptance by Seller at Seller's Home Office. No contract will be binding until it is executed by Seller's Home Office representative, at which time it will be binding on Seller and its respective successors, assigns, and legal representatives. The contract will be subject to and governed by these Terms and Conditions which are incorporated therein.

C. Confirmation of Order: Within fourteen (14) days of Seller's acceptance of the order, Seller will provide written confirmation of said contract to Buyer. Thereafter, When required seller will provide Buyer with complete mechanical drawings of the goods which are the subject of the order. It will be the Buyer's responsibility to check all mechanical drawings and all other documents immediately upon receipt. Failure by Buyer to notify Seller in writing of any objection or change within five (5) days of the receipt of the documents and drawings will result in delayed delivery.

D. Shipment Terms: All shipments for merchandise which are the subject of this agreement will be F.O.B. shipping point, unless otherwise negotiated. When required seller will provide buyer with mechanical drawings of the goods which are the subject of the order. Buyer should include with its order the specific method of shipment preferred and, in the absence of shipping directions, Seller will use its discretion in forwarding the shipment(s) by air, truck or parcel post.

E. Change Orders: Buyer may request changes within the general scope of the contract. Upon receipt by Seller of the requested change, Seller will provide Buyer with a written proposal reflecting the requested change as well as any increase or decrease to the overall costs of the order to Buyer. In response to any such proposal, Buyer may submit a change order to Seller which will become effective and part of the contract between Buyer and Seller upon acceptance by Seller in accordance with Section I.B. above. Notwithstanding any provision contained herein, the failure by either Buyer or Seller to execute a written change order will not bar a claim for a *quantum meruit* or unjust enrichment claim for an increase or decrease in the contract price based upon changes to the original contract.

F. Cancellation: Should Purchaser cancel any purchase order or change order which has been accepted by Seller, Purchaser shall be liable to Seller for all damages which result including, but not limited to, engineering, labor and material costs incurred or committed by Seller as well as any costs which are reasonably necessary for Seller to incur in order to mitigate its damages. Purchaser shall also be liable for lost profit in an additional amount equal to ten percent (10%) of the amount of the purchase order or change order. Finished goods may not be canceled.

II. Prices and Payment

A. Prices: Unless otherwise agreed to in writing, all pricing for the goods which are the subject matter of this contract will be as stated by Seller, and no change thereto will occur unless such change is agreed to by both parties in writing.

B. Payment and Credit: Unless otherwise agreed to in writing, payment will be as follows:

- (1) Thirty percent (30%) of the contract price will be paid by Buyer upon Buyer's approval of the documents and drawings referred to in Section I.C. above;
- (2) Sixty percent (60%) will be paid upon shipment of the contract goods by Seller;
- (3) the remaining ten percent (10%) will be due upon receipt of contract goods by Buyer.

Title to the goods which are the subject of this contract will remain with the Seller until such time as payment is received in full. Accounts will be opened only upon approved credit and at the sole discretion of Seller. Seller reserves the right to demand payment in advance or C.O.D. whenever Seller has any concern with respect to Buyer's financial condition.

C. Taxes: Taxes imposed by any present or future law, federal, state, county or municipal authority on the manufacture, sale or use of the goods purchased hereunder and required to be paid by Seller will be added to the amount to be paid by Buyer. Buyer will furnish evidence to Seller in writing of exemption(s), if applicable.

III. Deliveries

A. Liability: Seller assumes no responsibility for damage due to default or delay in production or delivery of all or any portion of any order for any reason, including not by way of limitation, default or delay resulting directly or indirectly from (1) accident to or breakdown of Seller's plant machinery or equipment, or that of Seller's suppliers; (2) labor disputes, embargoes, fires, riots, national emergencies, delays of suppliers, or carriers, government restrictions, prohibitions or allocations, (3) acts of God, or (4) any causes beyond the control of Seller. In no event will Seller be liable for any consequential, special or contingent damages arising out of Seller's default or delay in filling this contract.

B. Optional Goods and Services: The purchase price of goods hereunder does not include optional installation, service or equipment, including, but not by way of limitation, optional service kits, or any other additional goods.

IV. Limited Warranty

A. Seller warrants goods sold hereunder for a period of twelve months (12) due to defects in material or workmanship if the goods fail to function under normal wear and proper use. The delivered goods must be examined immediately upon receipt by the Buyer and any alleged defects in the delivered goods or performance thereof must be reported to the Seller within the warranty period. Provided that Buyer has properly maintained the delivered goods, Seller will, at its sole option, either repair or replace such products determined by Seller to be defective in workmanship or material. Seller will have the option to inspect the goods on Buyer's premises or to authorize the return of those goods for inspection by Seller at its own premises. No goods are to be returned to Seller without Seller's written consent nor will Seller be liable for any expenses, including inspection expenses incurred by Buyer, in order to remedy defects in the goods. Products manufactured by others but distributed or furnished by Seller are subject solely to the original manufacturer's warranty, if any, and Seller will not be liable under any circumstances for defects in such products. Any controversy or claim arising out of or related to this agreement or the breach

thereof must be commenced within one (1) year after the cause of action has accrued. Such repair or replacement by Seller will constitute the sole exclusive remedy available to Buyer in connection with any claim for breach of warranty relating to the goods.

B. The limited warranty herein made by Seller will, in no event, extend to the following:

- (1) damages to the goods resulting from fire, flood, storms, electrical malfunctions, malfunction of Buyer's equipment, accidents, acts of God, or from alterations, misuse, or abuse of the goods by any person whatsoever;
- (2) damages resulting from Buyer's failure to observe any installation, operating or service instructions furnished by Seller;
- (3) personal injury and/or property damage to the goods or any part thereof which have been connected or used with any machinery equipment or altered without written approval from an authorized officer at Seller's Home Office, or whichever have been repaired or altered or in any way so as to affect their stability or reliability or which has been subject to misuse, negligence, or accident, or which will not have been operated in accordance with Seller's instructions or beyond the factory-rated capacity of the goods; or
- (4) improper installation, service or maintenance of the goods by the Buyer and any damages resulting therefrom.

THE LIMITED WARRANTY HEREIN MADE BY SELLER IS IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCT, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY STATUTORY OR IMPLIED WARRANTIES OF MERCHANTABILITY FOR FITNESS OR FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF THE PRODUCT SOLD HEREUNDER. SELLER WILL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR CONTINGENT DAMAGES OR EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM ANY DEFECT IN ITS GOODS OR FROM THE USE THEREOF, NOR IS ANY OTHER PERSON AUTHORIZED TO ASSUME FOR SELLER ANY SUCH LIABILITY. NO SALESMAN OR OTHER REPRESENTATIVE OF SELLER IS AUTHORIZED TO ALTER OR MODIFY THIS WARRANTY IN ANY RESPECT WHATSOEVER, AND NO SUCH ALTERATION OR MODIFICATION WILL BE BINDING ON SELLER UNLESS CONTAINED IN A WRITING SIGNED BY THE HOME OFFICE REPRESENTATIVE OF SELLER.

V. Liability

A. Seller will not be liable for any damages or loss from the sale of these goods other than the liability contained in this agreement. Seller assumes no liability for down-time and damage to equipment or machinery of Buyer, and any other consequential damages as a result of the installation, service and performance of the goods. Because the goods furnished hereunder are used or combined by Buyer with other equipment or components not furnished by Seller, Buyer agrees to indemnify Seller for all claims resulting from the use or incorporation of said goods in the Buyer's machinery or equipment.

VI. Expenses of Litigation: In the event that Buyer and Seller become involved in any litigation, the prevailing party shall recover its costs, expenses and attorneys' fees incurred in enforcing or defending its rights hereunder.

VII. Entire Agreement

This agreement contains the entire agreement between Seller and Buyer with respect to the sale of the goods and installation and services to be provided by Seller. No other representations, warranties or other inducements or agreements reported to be made by any of Seller's representatives, whether oral or written, will be binding on Seller or have any force or effect.

VIII. Applicable Law

This agreement will be interpreted according to the laws of the State of Ohio and any action brought for the enforcement of the terms and provisions of this agreement must be resolved through binding alternative dispute resolution, utilizing the Center for Resolution Disputes, Cincinnati, Ohio. If any provision of this agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable to any extent, then the remainder of this agreement and the application of such provision to other persons or circumstances will not be affected thereby and will be enforced to the full extent permitted by the laws of Ohio.

By executing this Purchase Agreement, the Buyer acknowledges and accepts the provisions appearing on the front and the back of this agreement, including specifically the limited warranty statements contained herein, and the Buyer further acknowledges that this instrument comprises the entire agreement affecting this purchase.