



## TERMS & CONDITIONS

8950 Seward Road | Fairfield, OH 45011, USA  
1 866.252.2634 | www.albamfg.com

### I. General Terms and Conditions

**A. Terms of Agreement.** The sale, delivery, and performance by Alba Manufacturing, Inc. (hereinafter "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 future contract. In response to any proposal from Seller, Buyer may submit a purchase 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 proposals will be binding unless accompanied by a purchase or change order and unless executed by Seller's Home Office Representative. Seller's acknowledgment letter or acceptance is conditioned upon Buyer's assent and acceptance of these Terms and Conditions as being the exclusive terms. At the time of Seller's signature this agreement 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. Notwithstanding any of the Buyer's proposed terms or conditions to the contrary, to induce Alba to extend credit and not require payment in full in advance before manufacturing the Buyer's goods, the Buyer unconditionally and irrevocably accepts these Terms and Conditions and if these Terms and Conditions conflict with the Buyer's proposed terms and conditions, these Terms and Conditions shall control unless the Buyer objects in writing to the same within five (5) business days of Alba's acknowledgment.

**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, Seller will provide Buyer, if required, with complete mechanical drawings of the goods which are the subject of the order. It will be Buyer's responsibility to check all mechanical drawings and specifications and other documents immediately upon receipt. Failure by Buyer to notify Seller in writing of any objection or change to the drawing and specifications within five (5) business days of the receipt of the same may cause a delay in delivery.

**D. Shipment Terms.** All shipments of merchandise which are the subject of this agreement will be F.O.B. shipping point, unless otherwise negotiated. Buyer assumes freight costs and liability for any loss or damage to goods once they have left Seller's premises. Buyer should include with its order the specific method of shipment; in the absence of shipping directions Seller will use its discretion in forwarding the shipments(s) by air, truck, or parcel post. If any finished goods remain in Alba's possession more than five (5) business days after Buyer has been notified the goods are ready for shipment, the Buyer hereby consents and agrees that a storage fee of \$100 /sf per day for all finish goods that remain in Alba's possession more than five (5) business days is fair and reasonable.

**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 quantum meruit or unjust enrichment for an increase or decrease in the contract price based upon changes to the original contract.

**F. Cancellation.** Should Buyer cancel any purchase order which has been accepted by Seller, Buyer's cancellation will only apply to unfinished goods, raw materials and work in progress. Finished goods cannot be cancelled. If Buyer cancels an order, Buyer is liable and shall pay to Seller all costs and expenses incurred by Seller as of the date of the termination as well as all of Seller's damages which result, including (but not limited to) engineering, labor, allocable overhead, and material costs incurred or committed by Seller, as well as any costs which Seller reasonably incurs in order to mitigate its damages. Buyer 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.

### II. Prices and Payments

**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 in its acknowledgment, 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:

Net 30 Days from date of invoice. Title to the goods which are the subject of this contract shall transfer to Buyer upon completion and upon Buyer being notified the goods are ready for shipment. 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. Until the purchase price is paid in full to Alba, the Buyer, hereby unconditionally and irrevocably grants Alba a security interest in the goods and equipment that it sold to the Buyer, which shall secure the unpaid portion of the purchase price, plus any collections costs including reasonable attorneys' fees, and past due interest and the Buyer hereby authorizes Alba to file financing statement with the applicable government agencies.

**C. Taxes.** Taxes imposed by any present or future law (or by 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 any applicable exemption(s).

### 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 (without 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, governmental restrictions, prohibitions or allocations; (3) acts of God; or (4) any causes



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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. Notwithstanding anything to the contrary, Alba's maximum and exposure and maximum liability for any loss or damages shall be Fifty Thousand Dollars (\$50,000.00).

**B. Installation, Optional Goods and Services.** The purchase price of goods hereunder *does not* include optional installation, service, or equipment, including (without limitation) optional service kits or other additional goods.

### **IV. Limited Warranty**

**A. Terms of Limited Warranty.** Seller warrants on a limited warranty basis that the goods sold hereunder will perform according to Seller's specifications for a period of (24) months for all standard Alba catalog equipment and (12) months for all non-standard Alba custom equipment due to defects in material or workmanship if the goods fail to function under normal wear and proper use, with the exception of component parts not of Alba's manufacture (i.e. motors and gear reducers) which will be repaired or replaced at the option of the manufacturer. The delivered goods must be examined by Buyer immediately upon receipt, and any alleged defects in the delivered goods or performance thereof must be reported to Seller within the Warranty Period. Provided that Buyer has properly maintained the 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 incurred by Buyer in order to remedy defects in the goods. Products manufactured third parties 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 a defect 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 expiration of the Warranty Period or there are forever barred and waived. 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. Notwithstanding the foregoing, the Limited Warranty provided herein is null and void if the Buyer fails to pay Seller as agreed.

**B. Exceptions to Limited Warranty.** 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, accident, acts of God, or from alterations, misuse, or abuse of the good 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, if said goods (or any part thereof) have been: (a) connected or used with any machinery equipment or altered without written approval from an authorized officer at Seller's Home Office, (b) repaired or altered in any way so as to effect their stability or reliability, (c) subject to misuse,

negligence, or accident, (d) operated not in accordance with Seller's instructions or beyond the factory-rated capacity of the goods; or  
4) improper installation, maintenance, or service 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 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 WRITING SIGNED BY THE HOME OFFICE REPRESENTATIVE OF SELLER.

### **V. Miscellaneous**

**A. Liability.** Notwithstanding any rights in ORC 1302.01 to 1302.85 which the Buyer disclaims, the 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 and is released by Buyer of the following: (i) down-time or damage, whether to equipment or machinery or Buyer; or (ii) recalls of the Buyer's product and the associated damages therewith; or (iii) any other consequential damages as a result of the installation, service, or performance of the goods. Because the goods furnished hereunder are used or combined by Buyer with other equipment or components not furnished hereunder by Seller, Buyer agrees to indemnify Seller for all claims resulting from the use or incorporation of said goods in Buyer's machinery or equipment. In accordance with ORC 1302.98 the Buyer hereby agrees any action for breach of this agreement must be commenced one (1) year after the expiration of the Warranty Period or forever be barred and waived.

**B. Litigation Expenses and Interest Rate.** In the event Seller breaches this agreement and litigation occurs over nonpayment, partial payment, marshalling liens or collection of account by a third party (including collection of liquidated damages), Buyer shall be responsible for all of Seller's costs and expenses including (but not limited to) attorney's fees and/or collection fees incurred in enforcing or defending its rights hereunder. In addition, Buyer shall be responsible to Seller for interest at the rate of 18% per annum from the due date of any payment due under this agreement.

**C. Entire Agreement.** This agreement contains the entire agreement between Seller and Buyer with respect to the sale of goods and installation of service to be provided by Seller. No other representations, warranties, inducements, or agreements reported to be made by any of Seller's



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representatives (whether oral or written) will be binding on Seller or have any force or effect.

**D. Applicable Law.** The parties specifically and hereby irrevocably consent to jurisdiction in the state of Ohio and agree the provisions of Ohio Revised Code Sections 1302.01 to 1302.98 and all rights and remedies contained therein shall control all aspects of the sales of goods under this Agreement, except to the extent modified by these Terms and Conditions which shall control. This agreement will be interpreted according to the laws of the State of Ohio. Any action brought for the enforcement of the terms and provisions of this agreement shall be brought in Butler County, Ohio, and Seller hereby waives any right to contest the venue of an action brought in accordance with this agreement and the Parties waive their right to a Jury Trial.

**E. Severability.** 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 the State of Ohio.

**F. Acknowledgement.** By accepting and/or acknowledging a proposal or a purchase order or change order, or other written acceptance, Buyer acknowledges and accepts the provisions appearing on the front and back of these Terms and Conditions including specifically the limited warranty statements contained herein, and Buyer further acknowledges that these Terms and Conditions are an integral part of the Agreement.