

GENERAL TERMS AND CONDITIONS OF SALE

1. Applicability.

1.1 These terms and conditions of sale (these "Terms") are the only terms that govern the sale of the goods ("Goods") by Imperial Industries, Inc., a Wisconsin corporation ("Seller"), to the buyer named on the Order Confirmation (as defined below) ("Buyer"). Collectively, Buyer and Seller are referred to as the "Parties" and individually as a "Party."

1.2 The order confirmation (the "Order Confirmation"), the quote (the "Quote"), 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 supersedes any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Seller expressly rejects Buyer's general terms and conditions of purchase, and fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions or serve to modify or amend these Terms. Acceptance of the Order Confirmation by Buyer (which shall be deemed accepted should Buyer not object in writing within four (4) business days of receipt of the Order Confirmation) is a prerequisite to the purchase of the Goods and shall operate as an acceptance of these Terms which are expressly incorporated into the Order Confirmation.

1.3 These Terms apply solely to the sale of Goods by Seller to Buyer. Seller will not provide, and shall have no obligation to provide, any services in connection with the Goods, including, without limitation, installation or assembly services. Buyer shall be solely responsible for all such services. Seller shall have no responsibility or liability for any damages, losses, or claims arising out of or relating to (i) the installation, assembly, shipping, or use of the Goods, or (ii) any design, specifications, or requirements provided by or on behalf of Buyer related to the Goods.

2. Delivery.

2.1 The Parties acknowledge that the delivery schedule of Goods is set forth in the Order Confirmation. Delivery dates given by Seller are estimates only and are subject to shipping variations and requirements. Seller shall make commercially reasonable efforts to meet delivery dates, but Seller will not be liable for its failure to meet such dates. Seller shall not be liable for any delays, loss, or damage in transit.

2.2 Unless otherwise specifically set forth in the Order Confirmation, delivery of the Goods shall be FCA (Incoterms 2020) Seller's facility located at 550 W. Industrial Park Avenue, Rothschild, Wisconsin 54474 (the "Delivery Point"). Seller shall fulfill its delivery obligations by tendering the Goods to a transportation carrier at the Delivery Point, using Seller's standard methods for packaging and shipment. Buyer shall be responsible for all shipping, freight, insurance, and related charges. Buyer shall also be responsible for any costs, fees, or charges arising from Buyer's failure to timely accept shipment, including storage, demurrage, and re-delivery fees, whether from Seller or Seller's carrier, including any fees or costs associated with storage at Seller's carrier plus an administrative fee to be charged by Seller. Payment in full of all outstanding amounts, including any such fees, shall be a condition precedent to any release or re-shipment of the Goods.

3. Title and Risk of Loss. Title to and risk of loss of the Goods shall pass to Buyer upon Seller's delivery of the Goods to the transportation carrier at the Delivery Point. Delivery to the transportation carrier shall constitute delivery to Buyer for all purposes. As collateral security for the payment of the purchase price of the Goods and all other obligations of Buyer owing to Seller, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

4. Amendment and Modification. Except as set forth in Section 2.2, these Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each Party.

5. Inspection.

5.1 Buyer may visually inspect the Goods (the "Inspection") at the Seller's facility within ten (10) business days prior to Seller's delivery of the Goods to a carrier. Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as defined below) within four (4) business days following the Inspection (or, if Buyer does not conduct an Inspection, within four (4) business days prior to Seller's delivery of the Goods to a carrier) and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only that the Goods materially fail to conform to the terms of the Order Confirmation.

5.2 If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) repair the Nonconforming Goods, (ii) replace such Nonconforming Goods with conforming Goods, or (iii) credit or refund the Price for such Nonconforming Goods, together with any reasonable third-party shipping and handling expenses actually incurred and paid by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to the Delivery Point. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

5.3 Buyer acknowledges and agrees that the remedies set forth in Section 5.2 are Buyer's exclusive remedies for Nonconforming Goods. Except as provided under Section 5.2, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

5.4 Buyer warrants that Buyer's representatives shall observe all applicable access, safety, confidentiality, and security procedures applicable to Seller's facility. Failure by any such representatives to comply with such procedures shall constitute grounds for removal of such representative(s) from Seller's facility upon Seller's request. Buyer shall indemnify, defend, and hold harmless Seller and its affiliates, and their respective officers, directors, employees, and agents, from and against any and all losses, damages, liabilities, claims, costs, and expenses (including reasonable attorneys' fees) arising out of or resulting from Buyer's breach of this Section 5.4.

6. Price. Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in the Quote. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets. The Prices include standard packaging. Unless otherwise set forth in the Quote, the Prices exclude transportation and insurance costs which are the responsibility of the Buyer.

7. Payment Terms. Unless otherwise set forth in the Quote, Buyer shall pay the Prices to Seller as follows: 25% upon Buyer's receipt of the Order Confirmation; 25% upon Buyer's receipt of Seller's drawing(s) of the Goods; 25% prior to fabrication of the Goods; and the remaining 25% prior to shipment of the Goods to the carrier. All payments hereunder shall be in US dollars. Credit payments may be, at the Seller's sole discretion, accepted by Seller on a per-order basis. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and costs. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

8. Limited Warranty. Seller warrants to Buyer that: (i) for a period of eighteen (18) months commencing on the date the Goods are first made available by Seller for delivery to the Delivery Point (the "Warranty Period"), whether or not Buyer takes delivery or accepts the Goods at such time, all Goods provided by Seller, for which Seller is also the manufacturer or producer, will be free from material defects in materials and workmanship; and (ii) except for the encumbrances set forth herein, Buyer will receive good and valid title to the Goods, free and clear of all liens, security interests, and encumbrances. The warranties under this Section 8(i) do not apply where the Goods have been: (a) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental conditions, use contrary to any instructions issued by Seller, or improper testing, installation, storage, handling, repair, or maintenance; (b) reconstructed, repaired, or altered by anyone other than Seller or its authorized representative; or (c) used with any third-party product, hardware, or product that has not been previously approved in writing by Seller. In the event the parties mutually agree to extend the Warranty Period, Seller's warranty with respect to paint quality shall nevertheless expire eighteen (18) months after the date the Goods are first made available by Seller for delivery to the Delivery Point.

9. Buyer's Exclusive Remedy for Breach of Warranty. During the Warranty Period:

9.1 Buyer shall notify Seller, in writing, of any alleged warranty claim within four (4) business days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim (but in any event before the expiration of the applicable Warranty Period);

9.2 Buyer shall ship the relevant Goods within five (5) business days of the date of its notice to Seller, at Buyer's expense and risk of loss, to the Delivery Point for inspection and testing by Seller;

9.3 If Seller's inspection and testing reveals, to Seller's satisfaction, that such Goods do not conform with the limited warranty set forth herein, Seller shall in its sole discretion, and at its expense (subject to Buyer's compliance with this Section 9), either (i) repair or replace such Goods, or (ii) credit or refund the Price of such Goods less any applicable discounts, rebates, or credits;

9.4 If Seller exercises its option to repair or replace, Seller shall, after receiving Buyer's shipment of such Goods, ship to Buyer, at Buyer's expense and risk of loss, the repaired or replacement Goods to a location designated by Seller;

9.5 Buyer has no right to return for repair, replacement, credit, or refund any Goods except as set forth in this Section 9. In no event shall Buyer reconstruct, repair, alter, or replace any Goods, in whole or in part, either itself or by or through any third party; and

9.6 THIS SECTION 9 SETS FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8.

10. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER INDIVIDUAL OR ENTITY ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 8 OF THIS AGREEMENT.

11. Limitation of Liability. IN NO EVENT SHALL SELLER OR ANY OF ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD PURSUANT TO ORDER CONFIRMATION.

12. Change Orders.

12.1 Seller shall not be required by Buyer to modify the specifications, drawings, or otherwise alter the design of the Goods without a change order ratified by way of the procedure set forth herein: all change orders (i) shall be documented in writing, (ii) shall be signed by Seller and Buyer before any work affected by the change order has been performed, and (iii) shall document (a) the nature of the change in the work, (b) the amount of the adjustment in the payments due to Seller hereunder, if any, and (iii) the extent of the adjustment in the time for performance of the work by Seller hereunder, if any.

12.2 In the event Buyer requests that delivery be delayed beyond ninety (90) days following the delivery date set forth in the applicable Order Confirmation, the Prices shall automatically increase by five percent (5%) for each successive thirty (30)-day period, or portion thereof, during which delivery is delayed.

12.3 In addition to the other adjustments set forth in this Section 12, Buyer shall pay the following fees in connection with any Buyer-requested revisions to Seller's drawings of the Goods: (a) no fee shall apply to the first revision request after Buyer's receipt of such drawings; (b) a fee of One Thousand Five Hundred Dollars (\$1,500) shall apply to each revision requested thereafter and prior to Seller's approval of the drawings; and (c) following Seller's approval of the drawings, a fee of Ten Thousand Dollars (\$10,000) shall apply to each subsequent revision request.

13. Cancellation by Buyer. Buyer may cancel the purchase of Goods only by providing written notice to Seller. Any such cancellation shall be subject to Buyer's payment of cancellation charges determined in accordance with the stage of production at the time Seller receives such notice, as follows: (i) if notice of cancellation is received prior to the commencement of manufacturing of the Goods, Buyer shall pay fifteen percent (15%) of the Price; (ii) if notice of cancellation is received after commencement of manufacturing but prior to release of the Goods to fabrication, Buyer shall pay seventy percent (70%) of the Price; or (iii) if notice of cancellation is received after substantial completion of the Goods, Buyer shall pay one hundred percent (100%) of the Price.

14. Compliance with Law. Buyer shall at all times comply with all laws applicable to the operation of its business, this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the Goods. Without limiting the generality of the foregoing, Buyer shall (i) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Goods and (ii) not engage in any activity or transaction involving the Goods, by way of shipment, use, or otherwise, that violates any law.

15. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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. In the event of termination, Seller shall be paid for all work performed through the effective date of termination and for all costs incurred by Seller which are incidental to or arise as a result of such termination.

16. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement by Seller operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by Seller precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Seller.

17. Confidential Information. All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer or which Buyer obtains as a result of Buyer's access to Seller's facility, 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 use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. Force Majeure. Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, the following force majeure events ("Force Majeure Events"): (i) acts of God; (ii) flood, fire, pandemic, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) order or action by any governmental authority or requirements of law; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (ix) other events beyond the reasonable control of the Impacted Party.

19. Assignment. Buyer's rights, interests, or obligations hereunder may not be assigned, transferred, or delegated by Buyer without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

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 benefits solely the Parties to this Agreement. Nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

22. Governing Law; Jurisdiction. This Agreement is governed by, and construed in accordance with the laws of the State of Wisconsin without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction. All legal proceedings shall be instituted in the state or federal courts of the State of Wisconsin. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. If a civil action is filed, Buyer and Seller shall engage in mediation by a mutually agreed upon neutral mediator before conducting formal discovery. At mediation, both Buyer and Seller shall each have a designated representative attend with full authority to settle the civil action. Buyer and Seller are responsible for their own attorneys' fees and other expenses associated with mediation and equally paying the mediator's fee.

23. Notices. All notices shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Confirmation or to such other address for either party as that party may designate by written notice. All notices must be delivered by nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested).

24. Severability. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.