

## 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 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 Proposals will be binding unless accompanied by a purchase or change order and unless executed by Seller's Home Office Representative. 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 herein.

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 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 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 and, in the absence of shipping directions, Seller will use its discretion in forwarding the shipments(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 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 with has been accepted by Seller, Purchase shall be liability to Seller for all damages which result including, but no limited to, engineering, labor 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. 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. Finished goods may not be canceled.

## 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 on this proposal, 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 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 Buyers 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 good 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 for (1) accident to or breakdown of Seller's plan 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 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. **Installation, 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 good 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 delivered goods. Seller will, at its sole option, either repair or replace such products determined by Seller to be defect 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 by other 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 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 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 warrant 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, 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 good 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 anyway so as to effect their stability or reliability or which has been subject to misuse, negligence, or accident, 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 good by the Buyer and any damages resulting there from.

**THE LIMITED WARRANTY HEREIN MADE BY SELLER IS IN LIEU OF ALL OTHER WARRANTIES WITH RESPOND TO THE PRODUCT, EXPRESSED OR IMPLIED INCLUDING WITHOUT LIMITATION, ANY STATUTORY OR IMPLIED WARRANTIES OF MERCHANTABILITY FOR FITNESS OR FO 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. 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 or 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 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.

## VI. Expenses of litigation and interest rate:

In the event the Seller breaches this agreement and litigation occurs over nonpayment, partial payment and collection of account by a third party including collection of liquidated damages, the Buyer shall be responsible for all 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.

## V. 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 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 for e or effect.

## VII. Applicable Law

The parties specifically intend that the provisions of Ohio Revised Code Annotated, Sections 1302.01 to 1302.98 inclusive will control all aspects of this agreement and its interpretation and that all the definitions contained in those statutes will be applicable to this contract, except when this contract expressly provides otherwise. 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 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.

## VII. 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 o Ohio.

## VIII. Acknowledgement

IX. By accepting and or acknowledging this Proposal via a purchase order, change order or other written acceptance, the Buyer acknowledges and accepts the provisions appearing on the front and 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.