



Document: Terms and Conditions (Quotations)
Revision: Rev A
Revision Date: July 10, 2021

This proposal ("Proposal") is subject to the following terms:

1. The Seller's General Terms and Conditions are attached hereto as Exhibit A and fully incorporated into this Proposal as if they were set forth fully herein. The Seller's Terms and Conditions and the provisions included in this Proposal are collectively referenced herein as the "Terms."
2. Due to volatility in market conditions and other factors, pricing in this Proposal is valid for 24 hours after transmission to Buyer. Thereafter, Seller shall have the sole and exclusive right to modify the pricing set forth above. In the event the Seller accepts a Purchase Order, all pricing in such Purchase Order will be subject to the Terms.
3. If Buyer accepts the Proposal, Buyer shall send a Purchase Order prior to the Expiration Date.
 - a. Within two (2) Business Days of Seller's receipt of a timely submitted Purchase Order, the Seller may:
 - i. accept the Purchase Order by confirming such acceptance in a written or electronic communication addressed to Buyer that includes a lead time on the Products identified in the Purchase Order;
 - ii. request Buyer submit a revised Purchase Order; or
 - iii. reject the Purchase Order.
 - b. Notwithstanding anything to the contrary in these Terms or any Purchase Order submitted to Seller, the Seller shall have no obligation to accept any Purchase Order submitted by Buyer.
 - c. Any Purchase Order not accepted by the Seller in accordance with this provision within two (2) Business Days of Buyer's submission of such Purchase Order shall be deemed rejected. A "Business Day" means any day except Saturday, Sunday or any other day on which commercial banks located in Tennessee are authorized or required by law to be closed for business.
4. If the Seller accepts a Purchase Order, the agreement between the parties shall include these Terms and the Purchase Order accepted by Seller (collectively the "Agreement"). The Agreement shall control over any inconsistent, additional, or different terms or conditions that appear on any acknowledgement by Buyer, work order submitted by Buyer, or other communication otherwise received from the Buyer, regardless of the order or timing by which such terms or conditions are submitted. Any additional or different provisions contained in such documents (including any click wrap terms) that purport to alter or vary any of the terms and conditions of this Agreement are hereby explicitly rejected, objected to, and superseded by this Agreement, and shall not become a part of the parties' contract for the products addressed herein. The Agreement may only be modified by a writing signed by both parties.

Exhibit A – Seller’s General Terms and Conditions

1. **Parties’ Agreement for the Sale of Products.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase the products identified in the Purchase Order (the “Products”). The Buyer and Seller identified in the Purchase Order are referenced together as the “Parties” and each, a “Party”.

2. **Purchase Orders.** The Purchase Order will specify the quantity, description, and unit price of the Products ordered, the requested delivery date, the billing address, Buyer’s Shipping Address, and the terms and conditions included in the purchase order form attached to the Terms as Exhibit B (“Basic Purchase Order Terms”). For the avoidance of doubt, the term “Basic Purchase Order Terms” does not include any other general terms or conditions, except for those included in the purchase order form attached to the Terms as Exhibit B. Buyer shall not submit any Purchase Order with terms differing or conflicting with the terms set forth herein. Seller will endeavor to fulfill the Purchase Order, and will use commercially reasonable efforts to meet the delivery schedule(s) set forth in the Purchase Order. The Parties intend for the Terms and the Basic Purchase Order Terms to exclusively govern and control each of the Parties’ respective rights and obligations regarding the subject matter of this Agreement, and this Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary or different terms contained in any Purchase Order or other request or communication by Buyer pertaining to the sale of Products by Seller, and any attempt to modify, supersede, supplement or otherwise alter this Agreement, will not modify this Agreement or be binding on the Parties, unless such terms have been fully approved in a writing signed by authorized Representatives of both Parties.

3. **Shipment, Delivery, and Inspection.**

3.1 **Shipment and Delivery.** Unless otherwise expressly agreed by the Parties in writing, Seller shall select the method of shipment and the carrier for the Product. All Products shall be sold to the Buyer F.O.B. Seller’s Shipping Address, using Seller’s standard methods for packaging and shipping such Product. Any time(s) quoted for delivery, including, but not limited to, the Requested Delivery Date, is an estimate only; provided, however, that Seller shall use commercially reasonable efforts to ship Product within the timeframes set forth in the Purchase Order. Title to Products shipped under the Purchase Order passes to Buyer upon payment to Seller for the Product.

3.2 **Inspection and Notice of Nonconforming Product.** Buyer shall inspect Products received under this Agreement within ten (10) days of receipt of such Products (“Inspection Period”) and either accept or, only if any such Products are materially defective (“Nonconforming Products”), reject such Products. Buyer will be deemed to have accepted the Product unless it provides Seller with written notice of any Nonconforming Products during the Inspection Period, stating with specificity all defects and nonconformities, and furnishing such other written evidence or other documentation as may be reasonably required by Seller (including the subject Products, or a representative sample thereof, which Buyer contends are Nonconforming Products). All defects and nonconformities that are not so specified will be deemed waived by Buyer, such Products shall be deemed to have been accepted by Buyer, and no attempted revocation of acceptance will be effective. If Buyer timely notifies Seller of any Nonconforming Products, Seller shall determine, in its reasonable discretion, whether the Products are Nonconforming Products. If Seller determines that such Products are Nonconforming Products, Seller shall, in its sole discretion, either: (a) replace such Nonconforming Products with conforming Products; or (b) refund to Buyer such amount paid by Buyer to Seller for such Nonconforming Products.

4. **Pricing and Payment.**

4.1 **Pricing.** The consideration to be paid Seller by Buyer for Products furnished under this Agreement shall be the prices set forth in the Purchase Order. Buyer shall pay for all shipping charges and insurance costs. In addition, all Prices are exclusive of, and Buyer is solely responsible for, all taxes with respect to, or measured by, the manufacture, sale, shipment, use or Price of the Products (including interest and penalties thereon); provided, however, 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.

4.2 **Price Changes.** The prices set forth in the Purchase Order are based on the market rates set forth in the Steel Index (<https://www.marketwatch.com/investing/index/steel?countrycode=xx> and Copper Index (<https://www.nasdaq.com/market-activity/commodities/hq:cmx>) (each an “Index”) as of the Order Date indicated on the Purchase Order. Seller shall have the right to adjust prices set forth in the Purchase Order upon written notice to Buyer if, at any time after Buyer’s acceptance of the Purchase Order, prices in either Index fluctuate more than five percent (5%) from market rates as of the Purchase Order date.

4.3 **Payment Terms.** Payments are due NET THIRTY (30) calendar days from the date on the invoice. Buyer shall pay interest on all late payments, calculated daily and compounded monthly, at the lesser of the rate of seven percent (7%) per month or the highest rate permissible under applicable law. Buyer shall also reimburse Seller for all reasonable costs incurred by Seller in collecting any late payments, including attorneys’ fees and court 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 under this Agreement), if Buyer fails to pay any amounts when due under this Agreement, Seller may (a) suspend the delivery of any Products, or (b) terminate this Agreement pursuant to Section 9.

4.4 **No Set-off Right.** Buyer shall have no right, under this Agreement, any Purchase Order, or any other agreement to, withhold, offset, recoup or deduct from any amounts owed to Seller under this Agreement based on any other amount allegedly owed to Buyer by Seller, whether relating to Seller’s or its affiliates’ breach or non-performance of this Agreement, any Purchase Order, or any other agreement between Buyer and Seller.

5. **Intellectual Property Rights.** Buyer acknowledges and agrees that: (a) Seller will retain all intellectual property rights used to create, embodied in, used in and otherwise relating to the Products and any of their component parts; (b) any and all Seller’s intellectual property rights are the sole and exclusive property of Seller or its licensors; (c) Buyer shall not acquire any ownership interest in any of Seller’s intellectual property rights under this Agreement; (d) any goodwill derived from the use by Buyer of Seller’s intellectual property rights inures to the benefit of Seller or its licensors, as the case may be; (e) if Buyer acquires

any intellectual property rights in or relating to any Product, by operation of law or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either Party; and (f) Buyer shall use Seller’s intellectual property rights only in accordance with this Agreement and any instructions of Seller.

6. **Confidentiality.** “Confidential Information” means the terms of this Agreement, discoveries, ideas, technology, know-how, trade secrets, processes, formulas, drawings and designs, specifications, unpublished information relating to the Products, business plans, strategies, and any other information that should reasonably be considered confidential information as disclosed by the Seller to the Buyer or generated under this Agreement. Confidential Information does not include information that: (a) was already in the possession of the Buyer prior to its receipt from the Seller; (b) is or becomes part of the public domain by reason of acts not attributable to the Buyer; (c) is or becomes available to the Buyer from a source other than the Seller which source, to the best of the Buyer’s knowledge, has rightfully obtained such information and has no obligation of non-disclosure or confidentiality to the Seller with respect thereto; (d) is independently developed by the Buyer without reference to any Confidential Information of the Seller, as evidenced by the Buyer’s written records; or (e) has been or must be publicly disclosed by reason of legal, accounting or regulatory requirements beyond the reasonable control, and despite the reasonable efforts of the Buyer (in the case of such event, disclosure shall be subject to delivery of a prior written notice to the Seller, so that the Seller may seek a protective order or other appropriate remedy). Buyer agrees not to disclose or use (except as permitted or required for performance by the party receiving such Confidential Information of its rights or duties hereunder) any Confidential Information of the Seller. Access to the Seller’s Confidential Information shall be restricted to the Buyer’s employees and agents, who, in each case, need to have access to carry out a permitted use and are bound to maintain the confidentiality of such Confidential Information. The Confidential Information, and all copies of part or all thereof, shall be and remain the exclusive property of the Seller.

7. Representations and Warranties.

7.1 **Buyer’s Representations and Warranties.** Buyer represents and warrants to Seller that: (a) the execution of the Purchase Order, and Buyer’s performance hereunder, is within its duly authorized powers and does not conflict with any other contract or obligation of Buyer. Buyer shall not enter into any agreement or understanding, whether written or oral, which conflicts or is inconsistent with the terms of this Agreement; and (b) this Agreement has been executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

7.2 **Seller’s Representations and Warranties.** Seller represents and warrants to Buyer that Seller’s performance under the Agreement is within its duly authorized powers and does not conflict with any other contract or obligation of Seller and this Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

7.3 **Limited Product Warranty.** Subject to the limitations set forth herein, Seller warrants to Buyer (the “Product Warranty”) that, for a period of one (1) week from the date of shipment of a Product (the “Warranty Period”), each Product will be free from material defects in material and workmanship. The Product Warranty does not apply to any Product that: (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller; (b) has been reconstructed, repaired or altered by persons other than Seller or its authorized Representative; or (c) has been used with any third-party products or hardware that has not been previously approved in writing by Seller.

7.4 **Buyer’s Exclusive Remedy for Defective Products.** Notwithstanding any other provision of this Agreement, this section contains Buyer’s exclusive remedy for Defective Products. “Defective Products” shall mean any Product that does not conform to the Product Warranty. Buyer’s remedy under this section is conditioned upon Buyer’s compliance with its obligations hereunder. During the Warranty Period, with respect to any allegedly Defective Product: (1) Buyer shall notify Seller, in writing, of any alleged claim or defect within five (5) Business Days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period); (2) Buyer shall ship, at its expense, such allegedly Defective Product to Seller for inspection and testing by Seller; (3) if Seller’s inspection and testing reveal, to Seller’s reasonable satisfaction, that such Products are defective. and any such defect has not been caused or contributed to by any of the factors described under Section 7.3, Seller shall in its sole discretion and at its expense, repair or replace such Defective Product; and Seller shall ship to Buyer, at Seller’s expense, the repaired or replaced Products to the delivery location specified in the applicable Purchase Order. Buyer has no right to return for repair, replacement, credit or refund any Product except as set forth in this section. THIS SECTION 7.4 SETS FORTH BUYER’S SOLE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN SECTION 7.3.

7.5 **DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES; NON-RELIANCE.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 7.2 AND THE LIMITED PRODUCT WARRANTY SET FORTH IN SECTION 7.3, NEITHER SELLER NOR ANY PERSON ON SELLER’S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

8. **Indemnification.** Seller shall defend, indemnify, and hold harmless Buyer, its members, officers, directors, employees, shareholders, agents, and authorized representatives, against any and all damages, costs, and expenses (including reasonable attorneys’ fees) arising out of or in connection with any third-party claims for injury or death to persons and/or property damage, regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent such claims are caused by Seller’s defective design or manufacture of the Products. Seller will cooperate with Buyer to identify and remedy any defect, default, claim of defect, or other problem or quality issue relating to the Products. Except to the extent caused by Seller’s defective

design or manufacture of the Products, Buyer shall defend, indemnify, and hold harmless Seller, its members, officers, directors, employees, shareholders, agents, and authorized representatives, against any and all damages, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with any third-party claims or demands for injury or death to persons and/or property damage, regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, related to or arising from Buyer's: (a) use (including, but not limited to resale) of the Product; (b) negligence or willful misconduct, and/or (c) material breach of this Agreement. If Buyer is required to defend Seller, counsel retained by Buyer to defend Seller shall be acceptable to Seller and Seller reserves the right to reasonably reject such counsel and require retention of substitute counsel reasonably acceptable to Buyer.

9. **Termination and Survival.** This Agreement may be terminated by either Party for a material breach by the other party of this Agreement. Except for termination pursuant to Section 4.3, written notice of default must be given, including specific charges of default and reasonable requirements to cure, after which the party in default will have thirty (30) days to cure. If the defaulting party fails to cure within that time, the party giving notice may terminate this Agreement immediately upon written notice to the other party. All provisions which are continuing in nature, including, but not limited to, this subsection, Section 6 (Confidentiality), Section 7 (Representations and Warranties), Section 8 (Indemnification), and Section 9.2 (Effect of Expiration or Termination), will survive termination of this Agreement.

10. **Governing Law and Dispute Resolution.** The interpretation and enforceability of this Agreement shall be governed by the laws of the State of Tennessee (USA) regardless of the principles of conflicts of laws applied by the State of Tennessee or any other jurisdiction. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration will be Nashville, Tennessee. If the total value of the dispute is less than \$500,000 the arbitration shall be conducted by a single arbitrator selected by the Parties or appointed by the AAA if the Parties are unable to agree. If the total value of the dispute is \$500,000 or greater, the arbitration shall be conducted by an arbitration panel consisting of three (3) independent and impartial arbitrators, in which case, each Party shall nominate one (1) arbitrator for confirmation by the AAA, and the nominated arbitrators shall mutually select and agree on the third arbitrator within thirty (30) Days after their confirmation by the AAA (as applicable). The arbitrator(s)' decision shall be final and binding on both Parties and may be enforced in any court having proper jurisdiction. In arriving at his or her decision, the arbitrator(s) shall be guided and bound by the terms and conditions of this Agreement. The arbitrator(s) are not empowered to award damages in excess of compensatory damages consistent with this Agreement. Unless otherwise agreed in writing, Buyer shall continue its payment obligations for Services and amounts not in dispute, and Seller shall continue to diligently perform the Services and correct any Defects during the pendency of any dispute proceedings occurring under this Section 10.

11. **Limitation of Liability.** EXCEPT FOR BUYER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY OR THEIR 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 ANY BREACH OF THIS AGREEMENT. IN NO EVENT SHALL 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, EXCEED THE LESSER OF THE FOLLOWING: ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), THE TOTAL AMOUNT OF THE PURCHASE ORDER, OR THE AMOUNT(S) PAID FOR SUCH CLAIMS UNDER INSURANCE CARRIED BY THE SELLER.

12. **Additional Provisions.**

12.1 **Notices.** Notices with respect to this Agreement shall be given in writing and shall be effective on delivery. Notices may be delivered (i) in person, (ii) by certified mail, postage prepaid, return receipt requested, (iii) by a commercial overnight courier that guarantees next day delivery and provides a receipt, or (iv) by email if receipt of the email is confirmed by the recipient, except that notice shall not be delivered by email if the notice relates to breach or termination of the Agreement. Notices shall be addressed: (i) with respect to Buyer, to Buyer's physical/email address set forth in the Purchase Order; and (ii) with respect to Seller, to Seller's physical/email address set forth in the Purchase Order, with a copy to Seller's counsel: Steven M. Henderson, Sites & Harbison PLLC, 400 West Market Street, Suite 1800, Louisville, KY 40202, shenderson@sites.com. Each party shall notify the other of any changes to its address for receiving notices.

12.2 **Force Majeure.** Seller shall not be liable or responsible to the Buyer, 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, when and to the extent such failure or delay is caused by or results from acts beyond the Seller's reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) shortage of adequate supply of material components for the Products; and (j) other similar events beyond the reasonable control of the Seller. The Seller shall give notice within fourteen (14) days of the Force Majeure Event to the Buyer, stating the period of time the occurrence is expected to continue. The Seller shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Seller shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that Seller's failure or delay remains uncured for a period of ninety (90) consecutive days following written notice given by Seller under this section, Seller may thereafter terminate this Agreement upon thirty (30) days' written notice to Buyer.

12.3 **Insurance.** Buyer shall, at its own expense, maintain and carry in full force and effect, commercial general liability insurance (including product liability coverage) in commercially reasonable amounts, with financially sound and reputable insurers, and upon Seller's request, shall provide Seller with a certificate of insurance evidencing the insurance coverage specified in this section. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in such insurance policy.

12.4 **Assignment.** Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Seller may assign any of its rights or delegate any of its obligations to any affiliate or to any person or entity acquiring all or substantially all of Seller's assets. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

12.5 **No Third-Party Beneficiaries.** This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and 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.

12.6 **No Waiver.** Except as expressly stated herein, no waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the Party waiving its right. The parties agree that the failure of one party to require performance of any of the provisions herein shall not operate as a waiver of the right of such party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

12.7 **Relationship of the Parties.** The relationship between Seller and Buyer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

12.8 **Miscellaneous.** In carrying out this Agreement, the Parties shall comply with all federal, state or local laws and rules and regulations issued thereunder. If any term or provision of this Order is 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. Any headings used herein are for convenience in reference only and are not a part of this Agreement. The terms of this Agreement are contractual, and may not be changed, modified, altered, interlineated, or supplemented, nor may any covenant, representation, warranty, or other provisions hereof be waived, except by agreement in writing signed by the party against whom enforcement of the change, modification, alteration, interlineation, or supplementation is sought. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. The parties acknowledge to one another that no promise, inducement, or agreement not contained herein has been expressed or made to any of them in connection with this Agr