

TERMS AND CONDITIONS OF SALE

1. Agreement: In consideration of Brammall Industrial Supply Company and/or any of its affiliated or related entities (“**Seller**”) agreeing to provide goods or services to the Buyer, the Buyer agrees as follows: These Terms and Conditions of Sale together with the terms and conditions of any credit application, quotation, order acknowledgement and/or invoice prepared by Seller, not inconsistent herewith, constitute the agreement between the parties (the “**Agreement**”). Buyer’s acceptance is limited to the terms of this offer. Buyer agrees to each and every term contained in the Agreement as a precondition to Seller’s performance. Any term or condition in any purchase order or other form or document issued by Buyer, regardless of the materiality of the term or condition, that differs from or is contrary to the terms and conditions contained in the Agreement are objected to and excluded unless expressly agreed to in a written acknowledgment issued by Seller. No other terms or conditions not set forth in the Agreement shall apply unless expressly agreed to in a written acknowledgment issued by Seller. To the extent any conflict exists between these Terms and Conditions of Sale and the conditions of any credit application, quotation, order acknowledgement and/or invoice prepared by Seller, then the terms of the invoice will control.
2. Payment: Payment shall be made in the time and in the amount as set forth on the invoice issued by Seller. A time-price differential charge equal to 1.5% per month (18% per annum) will be charged on all balances not paid in full as required by the terms set forth in Seller’s invoice. If Buyer’s financial responsibility shall become unsatisfactory to Seller at any time and for any reason, Seller shall have the right, in addition to whatever other rights Seller may have at law or equity, to require payment in cash or to obtain satisfactory security from Buyer before making any further deliveries. In case any payment is not made when due, Seller shall have the right, in addition to its other remedies, to seek specific performance of this Agreement, to suspend any further deliveries, alter payment terms, or terminate this Agreement. Approval of credit for one or more deliveries shall not be deemed a waiver of this provision.
3. Disclaimer of Warranties. **SELLER DISCLAIMS ALL WARRANTIES IN CONNECTION WITH THE GOODS AND/OR SERVICES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION DESCRIPTION, QUALITY, DESIGN, PERFORMANCE, SPECIFICATIONS, CONDITION, MERCHANTABILITY, AND FITNESS FOR ANY PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT BUYER IS NOT RELYING ON SELLER’S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS AND/OR SERVICES SUITABLE FOR ANY PARTICULAR PURPOSE. NO PERSON, INCLUDING BUYER, IS AUTHORIZED BY SELLER TO MAKE WARRANTIES OR ASSUME ANY LIABILITY FOR SELLER WITH RESPECT TO THE GOODS AND/OR SERVICES. ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES AND SHALL NOT BE RELIED ON BY BUYER AND ARE NOT PART OF THE AGREEMENT. SELLER’S WARRANTY OBLIGATIONS, AND BUYER’S REMEDY, ARE SOLELY AS STATED IN THIS AGREEMENT.**
4. Notice of Claims. Buyer shall inspect the goods or services provided by Seller immediately upon delivery. Notice of any claim for shortage or defects discoverable on such inspection (a “**Claim**”) shall be made to Seller within five (5) days thereafter. Buyer shall, upon Seller’s request, furnish reasonable proof of any Claim, and Seller shall be given an opportunity to investigate. Failure of Buyer to give notice of any Claim within the specified period shall be deemed an irrevocable acceptance of the good and an unconditional waiver of any Claim.
5. Shipping/Title/Risk of Loss: The goods sold pursuant to this Agreement are sold F.O.B. Seller’s place of business. Title to the goods passes to Buyer when the goods are tendered to any carrier at any of Seller’s places of business or other loading point. All risk of loss or damage in transit shall be borne by Buyer (even if goods are shipped in trucks or vehicles owned by Seller). Buyer assumes responsibility for all costs of transportation.

6. Cancellation/Restocking Fee: Buyer may not cancel any aspect of this Agreement without the prior, written agreement of Seller. Except as expressly set forth herein, Buyer may not return any goods without Seller's written consent. All returns are subject to a restocking fee/handling charge, which may change from time to time. Contact Seller to determine the exact amount.
7. Force Majeure: Seller shall not be liable for any delay or impairment of performance resulting in whole or in part from any cause beyond Seller's control including, without limitation, fires, floods, explosions, accidents or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, shortages of transportation, fuel, labor or materials, inability to procure the goods or raw materials, severe weather conditions, changes of law or regulation, or any other circumstance or cause beyond Seller's control. Such excuse from performance shall extend so long as the event continues to delay or impair Seller's performance.
8. Field Representatives: The services of Seller's representatives in the field are offered on request and when personnel are available for such period of time and for such charge as Seller deems appropriate. Any such service is offered only on the condition that Seller shall not be deemed to have approved of, or in any manner to have assumed responsibility for, the engineering, design, supervision, inspection, or quality of the workmanship of the job. **IN NO EVENT SHALL THE SERVICES OR STATEMENTS OF SELLER'S REPRESENTATIVE CREATE A WARRANTY, EXPRESS OR IMPLIED, OR ANY OTHER OBLIGATION WITH RESPECT TO ANY PRODUCT OR SERVICE OF SELLER.**
9. Security Interest: Title to the goods sold pursuant to the Agreement shall remain with Seller until all payments therefore shall have been made in full in cash. Seller shall retain a purchase money security interest in the goods sold to Buyer, the accounts receivable related to the goods and the proceeds from the sale of the goods as security for Buyer's performance of its obligations hereunder. Buyer hereby authorizes Seller to create and file a financing statement. Buyer agrees to execute and deliver such other documents as necessary to create, perfect, preserve or enforce such security interest.
10. Miscellaneous Provisions Regarding Price and Delivery:
 - a. Unless specifically noted otherwise, prices do not include present or future federal, state or local taxes. All taxes shall be the responsibility of Buyer.
 - b. Prices do not include the cost of any independent laboratory inspection if such should be required.
 - c. Quoted deliveries are based on estimates at the time of quotation. Seller will devote its best efforts to meeting the delivery schedules but assumes no liability for additional costs or damages resulting from later deliveries.
11. Limitation of Liability:
 - a. Exclusive Remedy. The exclusive remedy for the Buyer for any damages incurred as a result of or relating to this Agreement and/or the goods or services sold hereunder is limited to the return of the price paid for such goods and services. In no event shall Seller be liable to Buyer or any other person or entity for any other damages of any kind, including, without limitation, indirect, special, incidental, consequential or punitive damages, arising from the goods or services or in connection with the use or inability to use the goods or services for any purpose whatsoever, irrespective of whether the claims or actions for such damages are based upon contract, tort, negligence, strict liability, warranty or otherwise. In no event shall Seller incur any liability whatsoever for damages of any kind arising out of or relating to delay in delivery.
 - b. Purchase Price: The disclaimer of warranties and limitation of liabilities set forth herein shall apply even if the remedies set forth herein fail of their essential purpose. Buyer acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and

cause consequential loss), and that the same form an essential basis of the bargain between the parties. No other remedies shall be available to the Buyer other than as set forth herein

12. **Indemnification:** Buyer or any guarantor of Buyer's obligations ("**Guarantor**") shall indemnify, defend and save Seller harmless from any liability, loss, cost, penalty, damage or expense, including attorneys' fees, which Seller may incur as a result of any claim, damage, injury, cause of action, proceeding, citation, or work stoppage arising out of or in any way connected with Buyer's purchase, installation, modification, or use of any goods or services provided by Seller. This indemnity includes all costs and attorneys' fees, regardless of whether litigation is filed or arbitration demanded. This indemnity survives the termination or completion of the sales transaction at issue. This indemnity also includes all claims for patent infringement or any intellectual property claims.
13. **Costs of Collection:** In the event Buyer or any Guarantor shall default in any way on Buyer's or Guarantor's obligations under this or any other Agreement, including without limitation the failure to make a timely payment, Buyer and Guarantor shall be jointly and severally liable to Seller for all of Seller's costs of collection including, but not limited to, attorney's fees and expenses.
14. **Intellectual Property Rights:** Buyer acknowledges and agrees that it is not acquiring any right, title or license in or to any of Seller's intellectual property or other proprietary rights associated with any of the goods or services provided hereunder.
15. **Insurance/Bonding:** The Buyer must maintain and pay for insurance coverage of the types and with the limits set forth in this section and its subsections. Buyer agrees and acknowledges that Seller is entering into this Agreement in reliance on Buyer's representation that the policies of insurance contemplated by these provisions will be in place, with all premiums paid.
 - a. Each policy of insurance must name Seller as an additional named insured, on a primary and non-contributory basis, and must provide that the same may not be canceled or altered, except upon thirty (30) days prior written notice to Seller.
 - b. In the event any policy or policies of insurance that Buyer is required to maintain is written on a "claims made" insurance form, each policy must have a "retroactive date" which is not later than the date on which the parties entered into their agreement. Furthermore, should insurance coverage be written on a "claims made" basis, Buyer's obligation to provide insurance must be extended for an additional period equal to the statute of limitations for such claims in the State of Michigan, plus one year.
 - c. By executing this agreement, and thereafter upon request, Buyer must provide to Seller a certification, signed by an authorized agent of Buyer and sworn to before a notary public under penalty of law, of the following: Buyer hereby certifies that it has not cancelled, and that Buyer has not delivered, sent by overnight courier, mailed, faxed, sent by telegram, or transmitted by any other means any notice of cancellation of, the Policies.
 - d. Certificates evidencing coverage by the policies of insurance identified in the provisions of this Agreement (the "**Policies**"), for instance in the form for a certificate for Additional Insured for Ongoing and Products/Completed Operations or its equivalent, must be delivered to Seller prior to the delivery of any goods or services and from time to time thereafter at Seller's request. The delivery to Seller of current certificates is an absolute condition precedent to any obligation by Seller to Buyer.
 - e. Buyer is independently responsible for any desired coverage against damage or loss to its own materials, facilities, roofs, equipment, scaffolds, bracing and similar items not covered by other policies of insurance.

- f. Seller and Buyer waive all rights against each other, including, but not limited to, rights of subrogation for damages caused by fire and other perils to the extent covered by the insurance required to be maintained hereunder.
- g. Prior to any performance by Seller or Buyer, Buyer must provide Certification of Insurance from an Insurance Company with an A.M. Best rating of A- or better evidencing coverage in amounts not less than the greater coverages required by the attached sample Certificate of Insurance and the following general principles.

- i. **Workers' Compensation Insurance:** Workers' Compensation and Employer's Liability Insurance shall be provided as required by law or regulation (statutory requirements). Employer's Liability insurance shall be provided in amounts not less than \$500,000 per accident for bodily injury by accident; \$500,000 policy limit by disease; and \$500,000 per employee for bodily injury by disease. If Buyer is a sole proprietor unable to obtain such insurance, this requirement may be satisfied by providing to Seller certification from the applicable State agency that Buyer is not subject to the State's worker's compensation coverage requirements.

- ii. **Commercial General Liability Insurance:** Covering Premises/Operations, and Bodily Injury, Property Damage, Personal Injury and Advertising Injury. Blanket Contractual Liability, XCU, and Completed Operations Coverage, Broad Form Property Damage including completed operations in the following minimum limits, or such higher limits as Buyer may specify:

Bodily Injury & Property Damage:	\$1,000,000 Each Occurrence
	\$1,000,000 Personal & Advertising Injury
	\$2,000,000 Products and Completed Aggregate
	\$2,000,000 General Aggregate per project
Excess/Umbrella Liability	\$3,000,000 Umbrella Form

- iii. **Automobile Liability:** Covering all owned, non-owned and hired vehicles in the amount of \$1,000,000 Combined Single Limit.

- iv. **Completed Operations Liability:** It is hereby agreed and understood that completed operations liability will be carried 3 years after the completion date of any project entered into using products that are the subject of this agreement.

- v. Buyer must separately maintain these aggregate limits of insurance coverage for each project.

- h. The terms and requirements relating to insurance coverage are subject to change at any time and from time to time by Seller in its sole discretion and Buyer covenants and agrees to promptly comply with such changes.

16. **Governing Law/Jurisdiction-Venue/Statute of Limitations:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to its conflict of law doctrine. **BY ENTERING INTO THIS AGREEMENT, BUYER WAIVES ANY RIGHT TO A JURY TRIAL.** By entering into this Agreement Buyer agrees to submit itself to jurisdiction in Michigan and to venue in any state or federal court located in Kent County, Michigan. **BUYER WAIVES ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR**

ANY GOODS OR SERVICES SOLD HEREUNDER IN ANY WAY IF NOT BROUGHT WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION FIRST ACCRUED TO BUYER.

17. Entire Agreement. This Agreement constitutes the parties' entire understanding with respect to the subject matter hereof. All prior or contemporaneous agreements whether oral or in writing, not included or incorporated herein by reference, are hereby disavowed and canceled. Modification or amendments of this Agreement must be in writing and signed by the party to be charged in order to be effective.