



## Terms and Conditions

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Acceptance of Terms and Conditions. The following terms and conditions are applicable to the Purchase Order to which these Terms and Conditions are attached between Bornquist, Inc. (“Seller”) and the purchaser identified in the Purchase Order (“Purchaser”) and are the only terms and conditions applicable to said Purchase Order. SELLER HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER’S BUSINESS FORMS, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE VOID AND OF NO EFFECT UNLESS SPECIFICALLY AGREED TO BY SELLER IN WRITING. Purchaser’s agreement to the Purchase Order by signature to consummate the purchase the products stated and described therein (“Products”) and/or services stated and described therein (“Services”) shall constitute Purchaser’s acceptance to these Terms and Conditions.

Terms of Payment. Purchaser shall provide payment to Seller in accordance with the payment terms stated in the Purchase Order and each individual invoice of Seller submitted to Purchaser. Seller may invoice Purchaser for each shipment made pursuant to the Purchase Order as a separate transaction without regard to any other shipment. For invoices not timely paid by Purchaser, Purchaser shall pay interest to Seller in addition to amounts overdue in the amount of 1.5% per month of the remaining balance overdue, however, in no event shall Purchaser be required to pay more than statutory limits on interest rates applicable to the Purchase Order. All invoices shall be due and payable in U.S. Dollars at Seller’s address specified on the invoice.

Shipping. All Products shall be delivered F.O.B. Seller’s shipping point and shall become the property of Purchaser upon delivery of Products to the shipping carrier. Purchaser shall assume all risk and liability for loss, damage, or destruction after delivery of Products to the carrier. Seller shall use commercially reasonable efforts to timely deliver Products to the shipping carrier upon receipt of the Purchase Order and all necessary shipping information from Purchaser. Seller reserves the right to have Products delivered to Purchaser in one or more shipments.

Inspection. Purchaser shall have five (5) business days upon delivery or any partial delivery of the Products described in the Purchase Order to advise Seller in writing of any part of the delivery of Products not conforming to the Purchase Order. Failure to advise Seller of any Products not conforming to the Purchase Order in writing shall constitute a waiver of Purchaser’s rights under this provision and the Products will be deemed acceptable to Purchaser. Upon receipt of written notice from Purchaser of non-conforming Products, Seller shall have a reasonable opportunity to confirm that the Products do not conform with the Purchase Order by inspection or by other means and shall be given a reasonable opportunity to cure any confirmed non-conformity. For Products confirmed to be not conforming to the Purchase Order by Seller, Purchaser’s sole remedy shall be replacement of the non-conforming Products or, in the event the non-conforming Products are not replaceable by Seller, Seller shall have the option to cancel the portion of the Purchase Order applicable to the non-conforming Products and return any payment made thereon by Purchaser.

Any loss to Purchaser occasioned by Products damaged in transit to Purchaser will be for Purchaser's account and claims for such loss shall be made solely against the shipping carrier.

No Return of Delivered Products. All sales of Products conforming to the Purchase Order are final. Seller shall have no obligation to accept the return of Products delivered to Purchaser and Purchaser shall only be allowed to return Products to Seller for refund only with the prior written consent to such return by Seller.

No Cancellation. Upon acceptance by Seller of Purchaser's Purchase Order by the issuance of a Sales Order Acknowledgement, or otherwise, such Purchase Order cannot be canceled, terminated or modified by Purchaser in whole or in part except with Seller's consent in writing and then only upon terms and conditions to be agreed upon which shall include protection of Seller against all losses. Purchaser shall compensate Seller for any costs incurred, including material and labor costs, in connection with any Purchase Order that Purchaser desires to cancel, terminate or modify.

**WARRANTY OF PRODUCTS.** SELLER WARRANTS THAT THE PRODUCTS OR SERVICES SOLD PURSUANT TO THE PURCHASE ORDER (A) WILL CONFORM TO THE DESCRIPTION, IF ANY, ON THE FACE HEREOF, (B) WILL BE CONVEYED FREE AND CLEAR OF ANY LIEN, SECURITY INTEREST OR ENCUMBRANCE CREATED BY SELLER OR ANY PARTY CLAIMING BY, THROUGH OR UNDER SELLER AND (C) WILL BE FREE FROM SUBSTANTIAL DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE FOR A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF SHIPMENT GIVEN PROPER INSTALLATION AND MAINTENANCE. ANY CLAIM ON ACCOUNT OF DEFECTIVE PRODUCTS OR SERVICES FOR ANY OTHER CAUSE WHATSOEVER SHALL CONCLUSIVELY BE DEEMED WAIVED BY PURCHASER UNLESS WRITTEN NOTICE THEREOF IS GIVEN TO SELLER PROMPTLY AFTER ANY PRODUCTS OR ANY SERVICES ARE PROVIDED HEREUNDER. SELLER SHALL HAVE THE RIGHT EITHER TO REPLACE OR REPAIR ANY DEFECTIVE PRODUCTS, TO REFUND THE PURCHASE PRICE UPON RETURN OF THE PRODUCTS OR TO GRANT A REASONABLE ALLOWANCE ON ACCOUNT OF SUCH DEFECTS, AND SELLER'S LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR DEFECTIVE PRODUCTS SHALL BE LIMITED SOLELY TO REPLACEMENT, REPAIR, REFUND OR ALLOWANCE AS SELLER MAY ELECT. SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS AND NO PRODUCTS SHALL BE RETURNED TO SELLER UNTIL AFTER INSPECTION AND APPROVAL BY SELLER AND RECEIPT BY PURCHASER.

**DISCLAIMER OF FURTHER WARRANTIES.** EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO ITS PRODUCTS OR SERVICES.

**LIMITATION OF LIABILITY AND REMEDIES.** SELLER SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE.

**GENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION, EVEN IF SELLER MAY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL SELLER'S LIABILITY UNDER OR IN CONNECTION WITH THE SALE OF PRODUCTS BY SELLER EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE. SELLER WILL NOT BE LIABLE TO PURCHASER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE.**

Product Use. Purchaser is responsible for determining whether any Product is fit for a particular purpose and suitable for user's method of application. Accordingly, and due to the nature and manner of use of Seller's products, Seller is not responsible for the results or consequences of use, misuse or application of its products by anyone.

Sourcing Product and Materials. Seller has no knowledge of Purchaser's general sourcing requirements related to its internal policies or for specific contracts of Purchaser related to the Purchase Order and the Products and materials stated therein. Seller shall have no obligation to inquire of Purchaser's sourcing requirements in fulfillment of this Purchase Order and unless Seller has provided Purchaser with Seller's prior written consent to procure products and materials from specific sources to fulfill this Purchase Order, Seller shall have no accountability nor liability to Purchaser for the origin of the Products or the materials contained therein. Purchaser agrees to indemnify and hold Seller harmless from any and all liability resulting from any failure to specifically source Products.

Taxes. Purchaser shall pay to Seller, in addition to the purchase price, the amount of all fees, duties, licenses, tariffs, and all sales, use, privilege, occupation, excise, or other taxes, federal, state, local, or foreign, which Seller is required to pay or collect in connection with the Products or Services sold to Purchaser.

Compliance with Laws. Seller hereby warrants to Purchaser, and Purchaser warrants to Seller, that in the performance of fulfilling this Purchase Order, each shall comply with all applicable Federal, state, and local laws, all rules and regulations thereunder, including any which relate to equal opportunity in employment or which relate to the protection of the health and safety of employees in connection with their employment, including that each is an equal opportunity employer. Pursuant to Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended, neither Seller nor Purchaser shall discriminate on the basis of race, creed, religion, color, national origin, ancestry, age, sex, sexual orientation, marital status, atypical heredity, disability, covered veterans status, including disabled veterans, recently separated veterans, other protected veterans and Armed Forces service medal veterans, or any other legally protected status as defined by law. Each party will make reasonable accommodations for any qualified applicant or employee and participates in affirmative action programs. As a condition of doing business with Bornquist, Inc., Seller expects Purchaser to practice equal opportunity employment and urge a vigorous affirmative action program.

Force Majeure. Seller shall not be liable for failure to perform or delay in performance or delivery of any Products or Services due to (a) fires, floods, strikes, or other labor disputes, accidents, acts of sabotage, riots, acts of or precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the control of Seller. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Products or Services among itself and its customers in such manner as Seller, in its judgment, deems fair and equitable.

Waiver. No failure of Seller to insist upon strict compliance by Purchaser with the Purchase Order and these Terms and Conditions or to exercise any right accruing from any default of Purchaser shall impair Seller's rights in case Purchaser's default continues or in case of any subsequent default by Purchaser. Waiver by Seller of any breach by Purchaser shall not be construed as a waiver of any other existing or future breach.

Litigation Costs. If any litigation or arbitration is commenced between Seller and Purchaser concerning any provision of the Purchase Order or these Terms and Conditions, the party prevailing in the litigation or arbitration is entitled, in addition to such other relief that is granted, to a reasonable sum as and for their attorneys' fees in such litigation or arbitration, provided that if each party prevails in part, such fees shall be allocated in such manner as the court or arbitrator shall determine to be equitable in view of the relative merits and amounts of the parties' claims.

Assignment and Delegation. No assignment of any right or interest or delegation of any obligation or duty of Purchaser under the Purchase Order may be made without the prior written consent of Seller. Any attempted assignment or delegation will be wholly void and totally ineffective for all purposes.

Integration Clause. The Purchase Order and these Terms and Conditions constitute the entire contract of sale and purchase between Seller and Purchaser with respect to the Products covered thereby, and supersedes any prior agreements, understandings, representations, purchase orders, price quotations and sales order acknowledgements with respect thereto. No modification hereof shall be of any force or effect unless in writing and signed by the party claiming to be bound thereby.

Construction. The Purchase Order and these Terms and Conditions and all other sales, agreements for sale, offers to sell, proposals, acknowledgments and contracts of sale, including, but not limited to, purchase orders accepted by Seller shall be considered a contract under the laws of the State of Illinois, and the rights and duties of all persons, and the construction and effect of all provisions hereof, shall be governed by and construed according to the laws of the State of Illinois.

Limitation of Actions. Notwithstanding any contrary statute of limitations, any cause of action for any alleged breach of these Terms and Conditions or the Purchase Order by Seller shall be barred unless commenced by Purchaser within one (1) year from the accrual of such cause of action.

Jurisdiction and Venue. Any dispute arising out of or related to the Purchase Order and these Terms and Conditions will be governed by and construed according to the laws of the State of Illinois and

litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction.

Severability. If any provision of the Purchase Order or these Terms and Conditions shall be held to be unlawful or unenforceable, the remaining provisions shall remain in full force and effect.