

MISSOURI TIE, LLC
GENERAL TERMS AND CONDITIONS OF SALE

All sales by Missouri Tie, LLC, a Missouri limited liability company (“Seller”), are subject to approval and acceptance by an authorized representative of Seller and are made subject to the following terms and conditions:

1. APPLICABILITY

These terms and conditions of sale (these “Terms”) are the only terms which govern the sale of goods (the “Goods”) by Seller to Buyer. Buyer agrees that it is a merchant as that term is used under applicable law. Seller’s acceptance of any order is expressly subject to Buyer’s assent to these Terms, and Buyer’s assent and agreement to these Terms shall be conclusively presumed from Buyer’s acceptance of all or any part of the Goods ordered. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. Terms additional to or different from those in these Terms, including, but not limited to, terms contained in Buyer’s purchase order or Buyer’s general terms and conditions of purchase, are deemed material and hereby rejected unless otherwise expressly accepted by Seller in writing.

2. SHIPPING AND DELIVERY OF GOODS; TITLE; RISK OF LOSS

(a) Unless otherwise agreed in writing by Seller, all Goods are delivered upon being made available for shipment at Seller’s facility. Buyer shall take delivery of the goods, or approve the Goods for shipment, as applicable, promptly upon Seller’s written notice that the Goods are available for shipment. All shipping, freight charges, and any charges at destination for spotting, switching, handling, storage and other accessorial services, and demurrage, shall be for Buyer’s account. Seller shall have the right to assess storage and handling charges for Goods left in Seller’s possession after notification to Buyer that the Goods are available to ship. Seller does not accept return of packaging, protective equipment or transport aids.

(b) Unless otherwise agreed in writing by Seller, title to Goods and risk of loss shall pass to Buyer upon tender of delivery, F.O.B. Seller’s facility. Seller will load the Goods at the direction of Buyer and the carrier. Buyer shall be solely responsible for securing and inspecting Goods at the point of shipment, and Seller shall have no liability for damage incurred in the loading, shipment or unloading of Goods.

(c) Calculation of the delivery date shall start with the date of Seller’s order confirmation. All delivery periods and dates are conditional based upon Seller’s factory conditions at the time of order confirmation. If Buyer delays with its contractual obligations, Seller is entitled to appropriately extend delivery periods and dates in accordance with the requirements of Seller’s production sequences. Seller shall not be liable for any claims for labor or for any special, indirect, incidental, or consequential damages, demurrage charges, cost of shipment, downtime, lost profits, lost sales, or any other damages resulting from delay in delivery.

(d) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

3. INSPECTION AND REJECTION OF NON-CONFORMING GOODS

(a) Buyer shall inspect all Goods within 24 hours of receipt (the “Inspection Period”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any non-conforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. At Seller’s request and option, Buyer must provide Seller an opportunity to examine the alleged non-conforming Goods without delay or a sample of the alleged non-conforming Goods. The Goods are in conformity if they do not deviate from the agreed specification at the time of passage of title and risk.

(b) If Buyer timely notifies Seller of any non-conforming Goods, Seller shall, in its sole discretion, either (i) replace such non-conforming Goods with conforming Goods, or (ii) repair or remediate the non-conformity, or (iii) credit or refund the purchase price for such non-conforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the non-conforming Goods to the location specified by Seller. If Seller exercises its option to replace non-conforming Goods, Seller shall, after receiving Buyer’s shipment of all non-conforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, conforming Goods.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 3(b) are Buyer’s exclusive remedies for the delivery of non-conforming Goods. Except as otherwise provided herein, all sales of Goods to Buyer are final and Buyer has no right to return Goods to Seller. No order may be cancelled or changed in whole or in part without the prior written consent of Seller.

4. TERMS & CONDITIONS OF PAYMENT

(a) Standard payment terms are Net 15 days from the date of the invoice in U.S. dollars, unless otherwise indicated in the quote, purchase order, or invoice. All sales are subject to the approval of Seller’s credit department.

(b) If Buyer fails to make payment in accordance with the terms hereof or fails to comply with any provision hereof, Seller may, at its option and in addition to any other remedies, cancel any unshipped portion of Buyer's order and Buyer shall remain liable for all unpaid accounts. Payment by Buyer of the price of the order shall be a condition precedent to Buyer's right to assert any claim against Seller.

(c) All sales are final. Buyer's obligation to pay any and all amounts due under the terms of these Terms is absolute and unconditional, shall not be subject to cancellation, termination, modification, or repudiation by Buyer, and shall be paid and performed by Buyer without notice or demand and without any abatement, reduction, diminution, setoff, defense, counterclaim, or recoupment whatsoever, including, but not limited to, any past, present, or future claims that Buyer may have against Seller or any manufacturer, supplier, or vendor of any Goods purchased hereunder or any other person or entity whatsoever. Any partial payments accepted by Seller will not affect any of Seller's rights to recover the full amount due Seller under these Terms, and such partial payments will be credited to Buyer's account. Partial payments, if applicable, will be applied to the oldest unpaid balances first.

(d) In the case of late payments, Buyer will be responsible to pay an interest charge of 1.5% per month (18% per year) on all past due amounts, calculated from the day the amount became past due. If Buyer fails to pay Seller any amount owing when due, Seller shall be entitled to pursue any and all remedies available at law, by statute, or in equity. Buyer agrees to pay all collection costs and expenses, including reasonable attorneys' fees, incurred by Seller in collecting or attempting to collect any past due account.

(e) Should the financial responsibility or condition of Buyer at any time become unsatisfactory to Seller in Seller's sole discretion, Seller shall have the right to suspend performance of any order and/or require payment in advance for any shipment hereunder and/or require satisfactory security or other adequate assurance satisfactory to Seller, in its sole discretion. All obligations of Seller, including without limitation, Seller's obligations with respect to non-conforming Goods as set forth herein, are subject to Seller withholding any performance (or payment, if applicable) which Seller determines reasonably necessary to fully protect and insure Seller against Buyer's failure to make payment as required hereunder or any other breach or threatened breach of Buyer's obligations hereunder or any other contract between Buyer and Seller.

(f) Purchase-Money Security Interest. As collateral security for the payment of the purchase price of the Goods and performance in full of all the obligations of the Buyer under this Agreement, the Buyer hereby pledges and grants to Seller, a lien on and security interest in and to all of the right, title, and interest of the 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. The security interest granted under this provision constitutes a purchase money security interest under the Missouri Uniform Commercial Code. Buyer reserves all rights and remedies available to it under applicable law, including all remedies available to a secured creditor under Article 9 of the Uniform Commercial Code and all remedies and rights of Seller hereunder are cumulative.

(g) Prices do not include any present or future federal, state, or local taxes based upon or measured by the sale, use, manufacture, or shipment of the Goods covered hereby. All such taxes shall be for Buyer's account, and, if paid by Seller, Buyer agrees to reimburse Seller on demand the full amount thereof.

5. NO WARRANTY - ALL SALES AS IS, WHERE IS

(a) Buyer agrees that the sale of all Goods is **AS IS, WHERE IS, WITHOUT ANY WARRANTY WHATSOEVER**, unless Seller provides Buyer a separate, written certification or warranty specific to the Goods purchased hereunder. Any such certification or warranty, to be valid and binding on Seller, must be issued by Seller and must be titled "Certification" or "Warranty."

(b) EXCEPT AS TO A CERTIFICATION OR WARRANTY AS DESCRIBED IN SECTION 5(a) ABOVE, SELLER MAKES NO WARRANTIES WITH RESPECT TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, MADE BY ANY AGENT OR SALES OR OTHER REPRESENTATIVE OF SELLER WHICH IS NOT SPECIFICALLY SET FORTH HEREIN SHALL BE BINDING UPON SELLER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF, OTHER THAN A CERTIFICATION OR WARRANTY SUPPLIED BY SELLER IN ACCORDANCE WITH SECTION 5(a) ABOVE.

(c) Products manufactured by a third party ("Third Party Products") may constitute, contain, or be contained in, incorporated into, attached to, or packaged together with, the Goods provided pursuant to these Terms. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCTS, INCLUDING, BUT

NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

(d) Seller shall not be liable for a breach of a Certification or Warranty under Section 5(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 30 days of the time when Buyer discovers or should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer, if requested to do so by Seller, returns such Goods at Seller's expense to the location specified by Seller for examination; and (iii) Seller reasonably verifies Buyer's claim that such Goods are non-conforming under the Certification or Warranty. Seller shall not be liable for a breach of a Certification or Warranty set forth in Section 5(a) if: (x) Buyer makes further use of such Goods after giving such notice; (y) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of such Goods; or (z) Buyer alters or repairs such Goods without the prior written consent of Seller.

(e) Subject to this Section 5, with respect to any Goods that do not meet the applicable Certification or Warranty under Section 5(a), Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective portion thereof), or (ii) credit or refund the price of such Goods at the pro rata contract rate, provided that, upon Seller's request, Buyer shall, at Seller's expense and as Seller may direct, return such Goods to Seller. THE REMEDIES SET FORTH IN THIS SECTION 5(e) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY GOODS NOT MEETING A CERTIFICATION OR WARRANTY ISSUED PURSUANT TO SECTION 5(a).

6. LIMITATION OF LIABILITY

(a) IN NO EVENT SHALL SELLER BE LIABLE, WHETHER IN CONTRACT, IN TORT, UNDER WARRANTY, IN NEGLIGENCE, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, DEMURRAGE CHARGES, COST OF SHIPMENT, DOWNTIME, LOST PROFITS OR REVENUES, DIMINUTION IN VALUE, OR LOST SALES.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

7. TERMINATION

In addition to any remedies that may be provided under these Terms, Seller may terminate Buyer's order(s) and/or these Terms with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (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.

8. INTELLECTUAL PROPERTY; CONFIDENTIALITY

(a) Buyer acknowledges and agrees that Seller retains ownership of all right, title, and interest in and to all intellectual property, works of authorship, trade secrets, and the like in all aspects of the Goods, including, but not limited to, all proprietary information patented, copyrighted or trademarked, or not, used, or developed in connection with Buyer's order (the "Intellectual Property"). Seller hereby grants to Buyer a limited right and license to use Seller's Intellectual Property, to the extent embedded or incorporated into the Goods, for the extent and purpose needed for the commercially reasonable use of the Goods. Buyer, for itself and its affiliates and subcontractors, agrees not to perform, cause, or permit the reverse engineering, disassembly, decomposition, or reverse compilation of the Goods. Neither Buyer, its personnel, nor other persons performing services for Buyer having had access to the Goods, may use the Goods to design products or other materials with similar or competitive functionality for any purpose. Buyer shall not alter or remove any patent, copyright, trademark, trade secret, proprietary, or other notices contained on or in the Goods.

(b) 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, 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", is confidential, solely for the use of performing these Terms, and may not be disclosed or copied without Seller's prior written authorization. Upon Seller's request, Buyer shall, at Seller's option, promptly return or destroy all documents and other materials received from Seller. Notwithstanding any provision of these Terms to the contrary, 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 Seller on a non-confidential basis from a third party.

9. FORCE MAJEURE

Seller shall not be liable for any failure or delay in manufacture, shipment, or delivery of Goods resulting from any cause beyond Seller's control, including, but not limited to, provisions of law or governmental regulations, accident, explosion, fire, windstorm, hurricane, flood, or other casualty or acts of God, strike, lockout, or other labor difficulty, riot, war, terrorism, insurrection, shortage or inability to secure labor, raw materials, production, or transportation facilities. If due to any of the causes set forth herein, Seller is unable to produce sufficient Goods to meet all demands from customers, Seller shall have the right to allocate production among its customers as Seller shall determine in its sole discretion.

10. MISCELLANEOUS

(a) These Terms shall be governed by and construed in accordance with the laws of the State of Missouri, U.S.A., exclusive of conflict of laws principles. Buyer irrevocably consents to the exclusive jurisdiction of the state and federal courts sitting in Reynolds County, Missouri. BUYER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY RELATING TO THESE TERMS.

(b) Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under these Terms. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under these Terms or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate these Terms if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Goods.

(c) These Terms, along with Seller's invoices and/or acceptance of Buyer's purchase orders, constitute the entire agreement between the parties and are intended to be the complete and final statement of the agreement between Buyer and Seller. All proposals, negotiations, and representations, if any, made prior to the date hereof, whether oral or in writing, are merged and superseded by these Terms, and these Terms may be modified only by a writing signed by Buyer and Seller. Buyer's terms and conditions in its purchase orders shall not apply, and Buyer agrees to the Terms contained herein in lieu of its standard terms and conditions.

(d) Buyer may not assign these Terms without Seller's prior written consent.

(e) No waiver of any right will be effective against Seller unless supported by consideration and expressly stated in a writing signed by Seller. The failure of Seller to enforce any right will not be construed as a waiver of Seller's right to enforce any such right in the future. The failure of Seller to require strict performance of any provision shall not diminish Seller's right thereafter to require strict performance of any provision.

(f) Any provision of these Terms prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.