

**BUCKEYE FABRICATING CO.**  
**TERMS AND CONDITIONS FOR SALES**  
**(Last Revised 6/18/19)**

Unless otherwise agreed in writing and regardless of the language in any purchase order or other preprinted form, these Terms and Conditions constitute the only Terms and Conditions under which Buckeye Fabricating Co. ("Seller") is willing to sell the Products specified on the attached form to its customer identified on the same form ("Buyer"), and no such order by Buyer or offer to sell by Seller is final until it is accepted by the Seller at its home office in Springboro, Ohio.

**1. Proposal/Quotation**

All proposal pricing will be valid for a period of thirty (30) days. If not accepted by Buyer prior to the 30 day period, Seller reserves the right to update the pricing to reflect current business conditions.

**2. Taxes**

Any and all applicable sales, use or other taxes are not included in the proposal pricing and are the sole responsibility of the Buyer. Exclusion of any such applicable taxes from Seller's invoices will only be made when Seller is provided with a valid certificate or document authorizing the Buyer to be exempt from the collection by Seller of such tax.

**3. Delivery and Risk of Loss**

Delivery dates are determined at the time of order placement. Delivery dates provided with proposals are estimates and may be revised at the time an order is placed based upon current business conditions. Reasonable efforts will be made to meet an estimated delivery contained in a proposal. Delivery dates are estimates and are not guaranteed. The title and risk of loss on the Products shall pass to Buyer at the FOB Point which in all cases will be Seller's dock.

**4. Terms of Payment**

Invoices will be sent to the Buyer promptly after the work is performed. Payments are due at the time of shipment, unless other terms are agreed to in writing by the parties. All accounts shall thereafter draw interest at the rate of 1-1/2 per cent per month until fully paid. Buyer shall be responsible for the payment of all attorney fees and other costs of collection.

**5. Reservation of Rights**

Should the Buyer be delinquent in the payment of any obligations due to Seller, Seller reserves the right to retain any equipment, system, tooling, dies, fixtures, samples, Products or other property of Buyer (collectively, "Property") until said account is paid in full and Buyer hereby grants Seller a security interest in said Property up to the full amount of the unpaid purchase price. Buyer authorizes Seller to file a financing statement on behalf of Buyer to perfect a security interest in such Property. Notwithstanding anything to the contrary herein, title to such Property does not transfer until the earlier of: (i) shipment of the Property per the terms of Section 3 above or (ii) Seller's receipt of full payment from Buyer for such Property.

**6. Proprietary Rights**

By submitting its purchase order, Buyer warrants that the work it is requesting Seller to perform will not infringe any patents, copyrights, industrial design rights or other proprietary rights of any third party. Buyer grants to Seller a limited license to use any patent, copyrights, industrial design rights or other proprietary rights of Buyer as needed to fulfill the purchase order. Seller retains ownership of all tools, methods, techniques, manufacturing processes and solutions, standards, and other development procedures and processes, previously developed by Seller or created for this project that may be incorporated in the Production of the Products ("Manufacturing Technology"). Seller may use the Manufacturing Technology in its business of providing manufacturing services, equipment or goods for other customers.

**7. Technical Information**

All technical information disclosed before and after this date by Buyer to Seller in connection with the goods or work to be performed by Seller is disclosed or will be disclosed on a non-confidential basis, unless otherwise agreed to by the parties. Except

as set forth in a written agreement between the parties to the contrary, Seller reserves all copyrights in and shall retain ownership of, all Product and design drawings.

## **8. Warranty and Claims; Limitation of Liability**

Subject to the Warranty terms set forth below, Seller warrants that the Products furnished hereunder will be free from defects for a period of one year from the date of manufacture and will be produced in accordance with the specifications received from the Buyer. EXCEPT AS SET FORTH HEREIN, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SUCH AS BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS OR REVENUES, DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT OR COST OF CAPITAL. SELLER'S LIABILITY TO BUYER AND/OR END USER HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL PURCHASE PRICE PAID HEREUNDER TO SELLER.

SELLER will repair or replace, at Seller's option, any Product that is found to be defective because of defective materials or workmanship or failure to conform to specifications received from Buyer, within one year of manufacture, with the following limitations and conditions ("Warranty"):

- a. Written notice of a claim must be delivered to Seller within thirty (30) days following the discovery of defects or such claim shall be deemed waived by the Buyer and in every case this written notice must be provided within one (1) year from the date of manufacture of the Product.
- b. Seller must be given a reasonable opportunity to investigate the Product and the claimed defect. Buyer will preserve all Products for a reasonable time to permit proper testing and investigation.
- c. Final determination as to whether or not a Product is defective rests with Seller. Prior to returning any Product to Seller, approval must first be obtained from Seller. If the Product was damaged in transit to Buyer, the claim must be filed with the carrier.
- d. Notwithstanding anything to the contrary herein, all parts and materials purchased by Seller from a manufacturer, seller or supplier and subsequently incorporated into a system, piece of equipment or tooling will carry the manufacturer's standard warranty. Seller assigns to the Buyer all rights and claims acquired against seller, supplier or manufacturers of said parts and materials. Buyer shall have no rights for warranty or any other claims against Seller for any such parts or materials.
- e. THIS WARRANTY DOES NOT COVER LOSS, DAMAGE OR DEFECTS RESULTING FROM IMPROPER OR INADEQUATE USE BY THE BUYER OR UNAUTHORIZED MODIFICATION OR MISUSE OF THE PRODUCTS. The Buyer has the obligation to maintain and operate the provided System or piece of Equipment in accordance with Seller recommendations. Failure to meet the forgoing will result in the Warranty being rendered null and void.

## **9. Conflicting Language**

In the event of a conflict between these Terms and Conditions and/or any other terms and conditions on any other contracts or invoices of Seller (collectively, the "Seller Documents"), and any purchase orders or other documents generated by the Buyer, the Seller Documents shall control and take precedence over the documents of the Buyer.

## **10. Force Majeure**

Seller shall not be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control, including but not limited to strikes, riots, war, fire, acts of God, terrorist activities, injunctions, compliance with any law, regulation or order, whether valid or invalid, of the United States of America, or any other governmental body or any instrumentality thereof, whether now existing or hereafter created.

## **11. Indemnity**

Buyer shall defend, indemnify and hold harmless Seller, its officers, directors, agents and employees from and against any and all losses, costs, liabilities, damages, expenses (including without limitation reasonable attorney's fees and expenses), claims, demands, actions and causes of action (collectively, "Claims") arising from or relating to the Seller's performance of the work on the Product(s) or in any way occasioned by an act or omission of the Buyer or any of its officers, directors, agents, or employees, or any person or entity the Buyer deals with or sells to after the Product leaves the control of the Seller.

The Buyer shall defend, indemnify and hold harmless Seller against and save it harmless from any and all Claims arising from or relating to any alleged or actual infringement or violation of any patent or patent right, arising in connection with the design, manufacture or shipping of the Products.

## **12. Confidential Information**

Seller represents and Buyer acknowledges that the processes utilized by Seller contain certain proprietary and confidential information. Buyer agrees to protect Seller's proprietary and confidential information and to not usurp or disclose such information to any third party.

## **13. Severability**

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

## **14. Choice of Law**

These general terms and conditions, along with any other document generated by Seller shall be construed and interpreted in accordance with the laws of the State of Ohio.

## **15. Contract Cancellation**

Any order or contract may be terminated by the Buyer only by written notice and upon payment of reasonable and proper termination charges. Termination charges include, but are not limited to, all costs incurred for personnel, facility, equipment and materials identified in the order or contract, up to the date of notice of termination. Seller will, upon receiving a written notice of cancellation, prepare and submit a cost-to-date invoice recognizing all costs incurred to the date of such request. The invoice will include applicable credits for the return of any standard components to stock, if any, plus a 15% cancellation fee that will be based on the total contract price. All termination charges, credits and the cancellation fees, less any payments previously made by the Buyer, shall be due and payable within thirty (30) days from date of invoice.

## **16. Abandonment of Product**

In the event that the purchased Product is not removed from the Seller's premises within four (4) weeks of the agreed upon ship date for any reason whatsoever then the Buyer shall pay Product storage fees at the rate of one percent (1%) of the total contract price per week up to a maximum of Two Hundred Fifty Dollars (\$250) per week. All Product storage fees shall be due and payable within five (5) days of the date of Seller's invoice to Buyer for said fees, and shall thereafter draw interest at the rate of 1-1/2 per cent per month until fully paid. Buyer shall be responsible for the payment of all attorney fees and other costs of collection related to the Product storage fees.

If the Product is not removed from the Seller's premises within six (6) months from the agreed upon ship date, or once the above-referenced storage fees equal the total contract price, whichever occurs first, then the Buyer hereby agrees and acknowledges that: (i) regardless of any full or partial payments for the Product previously made by Buyer, or the payment by Buyer of any Product storage fees pursuant to this Section 16, Buyer releases any and all right, title, and interest in the Product to Seller and Seller may dispose of the Product as it desires, in its sole discretion, including, but not limited to, sale or other transfer of the Product to a third party, or the removal and destruction of the Product; and (ii) in such event, Buyer agrees to take any and all actions as requested by the Seller, to evidence the transfer of ownership of the Product from Buyer to Seller.

## **17. Revisions**

Buyer agrees and acknowledges that these Terms and Conditions shall be revised by Seller from time to time and Buyer agrees that any such revised Terms and Conditions shall be binding upon Buyer.

THE FOREGOING TERMS AND CONDITIONS REPRESENT THE TERMS AND CONDITIONS AGREED TO BY SELLER. NO OTHER TERMS SHALL APPLY, AND ARE HEREBY SPECIFICALLY REJECTED, UNLESS SELLER AND BUYER STIPULATE AND AGREE TO DIFFERENT TERMS IN A WRITING EXECUTED BY BOTH PARTIES UNDER A SEPARATE AGREEMENT. THIS SALES ORDER IS EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO ALL TERMS AND CONDITIONS IN THE SALES ORDER AND HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE STATED IN THE BUYER'S PURCHASE ORDER, OR OTHER PURCHASING DOCUMENTS. SUPPLIER HEREBY GIVES NOTICE OF OBJECTION AND SPECIFICALLY REJECTS ANY DIFFERENT OR ADDITIONAL TERMS IN ANY RESPONSE TO THIS SALES ORDER.