

## TERMS AND CONDITIONS OF SALE

**AGREEMENT.** These terms and conditions (“Terms”) apply to the present or future sale of any products or services (“Products”) by Frost Incorporated, Frost Links, Inc. and/or Production Industries II, Inc. (or any of their respective affiliates) (“Seller”) to the purchaser specified in any accepted order (“Buyer”). An accepted order and these Terms are sometimes referred to in these Terms as this Agreement. Seller will not be bound by, and specifically objects to and rejects, any term, condition or other provision that is different from or in addition to these Terms (other than any specific commercial terms of an accepted order related to price, quantity and/or delivery method or timing) which is offered by Buyer in any purchase order, receipt, acceptance, confirmation, acknowledgement, correspondence or otherwise, unless Seller specifically agrees to such provision in a written instrument signed by Seller. Seller’s acceptance of any order by Buyer is conditioned on Buyer’s assent to these Terms, which Buyer assent will be deemed to be established by Buyer’s acceptance of any Products.

**PURCHASE AND SALE.** Seller will sell to Buyer, and Buyer will accept and pay for, all Products ordered by Buyer pursuant to an order which has been accepted by Seller. All orders are subject to acceptance by Seller either in writing or shipping Products. Seller may accept an order in whole or in part and Seller’s shipment of less than all Products ordered will constitute acceptance only as to those Products shipped.

**DELIVERY.** Seller will use commercially reasonable efforts to meet the delivery dates specified in accepted orders that are consistent with Seller’s standard order lead times as established by Seller from time to time, but will not be liable for any failure to meet such dates. Title to and risk of loss of the Products passes to Buyer upon delivery of the Products to Buyer or Buyer’s carrier. Delivery to Buyer occurs, and Seller’s liability as to delivery ceases, when, at the Seller’s option, the Products are (1) loaded on a for-hire carrier for delivery to Buyer, the carrier acting as Buyer’s agent; or (2) picked up by Buyer at Seller’s shipping point; or (3) deposited by Seller at Buyer’s receiving point. Seller reserves the right to make delivery in installments; all such installments will be separately invoiced and paid for when due, without regard to subsequent deliveries.

**PRICES AND TAXES.** Buyer will pay Seller the prices specified in the applicable accepted order or if no price is specified in the order, the price set forth in Seller’s price list in effect on the date the order is accepted by Seller. All prices are in United States dollars, and, unless otherwise agreed in writing, FOB point of shipment and do not include any sales, use or other taxes, duties or tariffs or delivery or shipping charges or fees. Buyer will pay for all shipping and delivery costs, taxes and other amounts payable to governmental authorities in connection with the applicable transactions. Buyer is responsible for maintaining current state tax exemption certificates where applicable and shall forward copies to Seller upon request.

**PAYMENT.** Buyer will pay the amount set forth on Seller’s invoice in United States dollars within Seller’s regular payment terms or those specifically quoted to Buyer. Payment terms are from date of invoice and are not contingent upon delivery. If Buyer fails to pay any amount when due, Seller may suspend or cancel deliveries of any ordered Products.

Seller also reserves the right to require from Buyer at any time satisfactory assurance of performance of Buyer’s payment obligations to Seller and to suspend or cancel deliveries of any ordered Products if Buyer fails to promptly furnish such assurances to Seller. Seller reserves the right to charge interest on any amount not paid when due at a rate of 1.5% per month (or the highest rate permitted by applicable usury law, if lower), compounded monthly, from the due date until the date paid. Further, Buyer will reimburse Seller for any costs or expenses, including (without limitation) reasonable attorney’s fees), incurred by Buyer to collect any amount not paid when due.

**CANCELLATION.** No order accepted by Seller may be cancelled or modified by Buyer except upon terms and conditions acceptable to Seller as evidenced by written consent signed by a duly authorized representative of Seller.

**OVERRUNS OR UNDERRUNS.** Seller reserves the right to deliver Products in standard production quantities where applicable. Quantities that exceed or are less than the contracted quantity within 10% of the quantity ordered shall constitute fulfillment of the order. Products will be invoiced in delivered quantities.

**STORAGE.** If Products ordered by Buyer are not shipped within 10 days of Buyer’s original requested shipment date or after notification to Buyer that they are ready for shipment, for any reason beyond Seller’s reasonable control, including (without limitation) Buyer’s failure to give shipping instructions, Seller may store such Products at Buyer’s risk in a suitable warehouse or yard and Buyer shall be responsible for all handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices.

**LIMITED WARRANTY.** Seller warrants that, upon delivery and for a period of 12 months thereafter, each Product it sells to Buyer shall be free from defects in workmanship and material and will comply with any specifications which have been provided by Seller to Buyer in a writing signed by Seller. EXCEPT FOR THESE EXPRESS WARRANTIES AND SELLER’S STATUTORY WARRANTY OF GOOD TITLE, SELLER MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING THE PRODUCTS INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OR ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE. Buyer assumes all risk and liability for results obtained by the use of the Products, whether used singly or in combination with other products.

**CLAIMS; LIMITATION OF LIABILITY.** Seller’s liability and Buyer’s remedies for any breach of these Terms or otherwise by Seller in the delivery of any Products is limited, at Seller’s option, to either the replacement of the affected Products returned to Seller or to a refund of the purchase price of the affected Product (or if not paid, to a credit in the amount of the purchase price.) No claim by Buyer of any kind, either as to Products delivered or for non-delivery of Products, shall be greater in amount than the purchase price of the Products in respect of which such damages are claimed. Failure to give notice of claim within ninety days from date of delivery, or the date fixed for delivery, shall constitute a waiver by Buyer of all claims in

respect to such Products. Products shall not be returned to Seller without Seller's written permission and return authorization number. No charges or expenses incident to any claims will be allowed unless approved by an authorized representative of Seller. No claim will be allowable after the Products have been treated, incorporated with other products or systems or processed in any manner. Seller shall have no liability for any claims related to Product defects in the event that the alleged defect was caused, in whole or in part, by Buyer's negligence or failure to properly install, store, maintain or care for the Products. **THE REMEDY HEREBY PROVIDED SHALL BE THE EXCLUSIVE AND SOLE REMEDY OF BUYER. IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING (WITHOUT LIMITATION) LOST PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS, ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT OR THIS AGREEMENT, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**EXCUSABLE DELAYS.** Seller shall not be liable for any failure to perform or delay in performance that is directly or indirectly due to acts of God or of the public enemy, governmental actions, fires, floods, or other accidents or casualties, quarantine restrictions, strikes, or other labor disputes, unusually severe weather, shortages or problems with the supply of materials or services, acts or omissions of carriers or other transportation difficulties, or other causes beyond Seller's reasonable control.

**TECHNICAL ADVICE.** Upon Buyer's request, Seller may furnish Buyer with technical advice or assistance as Seller has available in reference to the use of Products by Buyer. All such technical advice or assistance is given gratis (unless otherwise specified by Seller) and Seller assumes no obligation or liability for any advice or assistance given or results obtained; all such advice or assistance is given and accepted at Buyer's risk.

**DESIGN.** All structures and designs of and copy on the Products shall be approved by Buyer prior to manufacture. Any errors in design, copy and structure so approved shall be Buyer's responsibility. Changes in copy after approval shall be subject to additional charge.

**DISCLOSURE AND USE OF TRADE SECRETS AND CONFIDENTIAL INFORMATION AND DATA.**

(1) Buyer agrees that all information and data submitted by Seller under or pursuant to this Agreement, including (without limitation) that contained in drawings or specifications, is proprietary to Seller and will not be used by Buyer for any purpose other than fulfilling this Agreement, without Seller's prior written consent. Buyer further agrees to protect and keep confidential all trade secrets and other confidential information and data disclosed or furnished by Buyer, and to protect the same against disclosure to unauthorized persons.

(2) The above obligations regarding use and disclosure do not apply to information and data which Buyer can demonstrate

(a) is already in the public domain or later becomes part of the public domain through no fault of Buyer, or (b) is disclosed to Buyer on a nonconfidential basis by a third party having legitimate possession thereof and the independent right to make such disclosure. (3) Buyer agrees to return to Seller or destroy all information and data as requested by Seller at the termination of this Agreement or any other contract which may be entered into between Seller and Buyer at a future date, or in the event that no contract is consummated, at the termination of negotiations between the companies. (4) Any information which is proprietary to Buyer and which is disclosed in the Products or documents furnished hereunder shall be deemed to have been disclosed as part of the consideration of this Agreement and the Seller shall have full rights to its use as it sees fit.

**ASSIGNMENT.** Buyer's rights and obligations hereunder are not assignable or transferable by Buyer, in whole or in part, except with the prior written consent of Seller. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**NONWAIVER.** Any failure by Seller to insist upon or enforce performance by Buyer of any of the provisions of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of Seller's right to assert or rely upon any such provision, right or remedy in that or any other instance, but rather such provisions, rights and remedies will remain in full force and effect.

**SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed as if such invalid or unenforceable provision were replaced with a valid and enforceable provision as similar as possible to the one replaced.

**ENTIRE AGREEMENT AND AMENDMENTS.** This Agreement constitutes the entire agreement, and supersedes any and all prior agreements, between Seller and Buyer with respect to the Products. These Terms may be amended or terminated at any time by Seller. The paragraph headings in these Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of this instrument.

**GOVERNING LAW.** This agreement shall be governed by and construed and enforced in accordance with the laws of the state of Michigan, without reference to its choice of law principles. The U.N. Convention on Contracts for the International Sale of Goods will not apply to the purchase and sale of Products or this Agreement.

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