

ASSET SALES
Terms and Conditions

A. TAXES:

The price(s) specified do not include sales, use, excise or other taxes payable on account of this transaction, and all such taxes now in effect and/or hereafter levied which are applicable to this transaction are in addition to such prices and shall be paid by Buyer, unless Buyer furnishes to Seller an appropriate exemption certificate properly executed by Buyer.

B. PAYMENT:

Unless otherwise agreed to in writing, all payments must be made in advance of removal of the material sold hereunder from Seller's premises in the form of cash, post office money order, certified check, cashier's check, or other form acceptable to Seller. If Buyer fails to comply with these terms of payment, Seller reserves the right to withhold delivery until payment is made or terminate this Contract. Interest will be charged if payments are not made when due.

C. DISCLAIMER OF WARRANTY:

1. All assets are sold and Buyer accepts such assets "as is and with all faults," and the date of passage of risk to Buyer is as provided in paragraph D, below. Unless otherwise provided herein, Seller warrants title. Subject in the preceding sentence and except as otherwise expressly stated herein, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE ASSETS SOLD HEREUNDER, WHETHER USED ALONE OR IN COMBINATION WITH OTHER MATERIAL. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, DIRECT, CONSEQUENTIAL OR OTHERWISE, ARISING OUT OF ANY DEFECT OR DEFICIENCY IN THE ASSETS SOLD HEREUNDER.

2. Buyer represents it has inspected the assets prior to purchase.

3. If the assets are substantially damaged or destroyed by any cause whatsoever prior to passage of risk to Buyer as provided in paragraph D, below. Buyer's sole and exclusive remedy therefor shall be to terminate this Contract by giving notice thereof in writing to Seller prior to such passage of risk. Otherwise, Buyer shall accept the assets and without recourse against Seller. Seller is not an insurer of the material nor does it have the liability or duties of warehouseman or bailee.

D. DELIVERY, SHIPMENT AND STORAGE FEES:

1. Dismantling, disassembling or loading are not normally provided by Seller but may be upon terms and conditions to be agreed to in writing. Unless otherwise stated on the face sheet, Buyer will dismantle, disassemble (as necessary) and load the assets and all risk of loss, damage or other incidents of ownership to all of the assets shall immediately pass to Buyer as of the date such dismantling and/or disassembling commences, but in no event later than the date in "Date of Removal" on the face sheet hereof. Seller may impose storage fees on material not removed by the date of removal.

2. If the material is to be loaded on a carrier by Buyer, such loading shall be at Buyer's cost and expense, and if the risk has not already passed to Buyer as provided in paragraph 1, above, all risk of loss, damage or other incidents of ownership to all the assets shall immediately pass to buyer as of the date such loading begins, but in no event later than the date shown in "Date of Removal" on the face sheet hereof. Buyer assumes all transportation costs and risks. In all cases, however, title to such assets will be retained by Seller as security for Buyer's performance until payment in full is received.

E. DELAYS:

1. Seller shall not be liable for delay or failure in performance hereof arising from any cause not within Seller's reasonable control, including, but not limited to, accidents to or breakdowns or mechanical failure of material arising from any cause whatsoever, strikes or other labor troubles; labor shortage; fire, flood, war, acts of the public enemy; acts of God; priorities; allocations, limitations or other acts required or requested by Federal, State or local governments or any subdivision, bureau or agency thereof; or theft or damage by any third party.

2. In the event of delay or failure of performance not excused under the foregoing paragraph 1, Seller's liability shall not exceed that portion of the invoice price represented by the material delayed or not shipped. In no event shall Seller be liable for any consequential, special or contingent damages.

F. INSURANCE:

If dismantling, disassembling or loading is to be performed by or on behalf of Buyer on Seller's premises, Buyer shall procure at its own cost and keep in force the following insurance, satisfactory to Seller as to form and limits of liability, until completion of this Contract:

(a) Workers' Compensation insurance, as required by the Workers' Compensation laws of the state in which the work is being performed; and

(b) Public Liability and Property Damage insurance; and

(c) Automobile Liability and Property Damage insurance if automobiles, trucks, trailers or other vehicles are to be used.

Buyer shall name Seller as an additional insured on each policy described in (b) and (c) above.

Prior to the commencement of any work hereunder, evidence of such insurance, in policy or certificate form shall be deposited with Seller's Accounting Department at District or Division where the dismantling or disassembling or loading is to be performed. Where any part of the dismantling, disassembling or loading is performed by a subcontractor of Buyer, evidence of such insurance on behalf of such subcontractor similarly shall be provided by Buyer to Seller.

G. TBT AGREEMENTS:

If the assets are subject to a TBT Agreement, the Buyer must sign and return, with this executed form, a TBT Assumption Agreement in the form provided to Buyer with this form.

H. PATENTS:

Notwithstanding any other provisions hereof, Seller shall have no obligation or liability to Buyer for any suit, or action, or threat thereof, brought against Buyer or any other party and based on a claim that the purchase, use or resale by Buyer, of the assets sold hereunder constitutes an infringement of any patent, trade secret or other proprietary right. No patent, trade secret or license rights are granted with respect to the assets sold hereunder other than any license rights that may exist by operation of law.

I. INDEMNITY, SAFETY GUIDELINES:

1. Buyer shall indemnify and hold harmless Seller from and against any and all losses, claims, damages, liabilities and expenses of any kind or nature whatsoever, including attorneys' fees which may arise out of, result from or be reasonably incurred in connection with Buyer's performance of and compliance with the provisions of this Contract or the subsequent use or operation of the assets sold hereunder (including without limiting the generality of the foregoing, losses, claims, damages and liabilities to employees or agents of Buyer and of its subcontractors and their employees and agents), joint or several, to which Seller may become subject, including, without limiting the generality thereof, losses, claims, damages, liabilities and expenses (and actions in respect thereof) which relate to injury to or death of persons or damage to property that may have been caused, or that may be alleged to have been caused, directly or indirectly, by Buyer, its employees or agents, or its subcontractors, their employees or agents.

2. Buyer waives any provision of any Workers' Compensation law, statute or regulation which would otherwise prevent it from being joined or impleaded, or claimed against, in an action or proceeding by Buyer's employee (or representative) against Seller.

3. In the event Seller's machinery or equipment is used by buyer in the performance of any work that might be required under this Contract, such machinery or equipment shall be considered as being under the sole custody and control of Buyer during the period of such use by Buyer, and if any person or persons in the employ of Seller should be used to operate said machinery or equipment during the period of such use, such person or persons shall be deemed during such period of observation to be an employee or employees of Buyer.

4. Except as otherwise provided herein, Buyer shall at all times comply with Seller's General Safety Guides for Contractors (wherein the term "Seller" shall be substituted for the term "Owner", and the term "Buyer" for the term "Contractor" as the context requires), a copy of which is attached, and such other safety regulations as may be required by Seller's local management while on Seller's premises.

J. GOVERNING LAW:

Unless otherwise specified in Seller's acknowledgment, all orders are accepted by Seller at its General Offices in Waynesville, Ohio and shall be governed by and interpreted in accordance with the laws of the State of Ohio.

K. MODIFICATION OF TERMS:

Seller's acceptance of any order is expressly subject to Buyer's assent to each and all of the terms and conditions set forth in Seller's acknowledgment and Buyer's assent to these terms and conditions shall be conclusively presumed from Buyer's receipt of Seller's acknowledgment without prompt written objection thereto or from Buyer's acceptance of all or any part of the goods or services ordered. No addition to or modification of said terms and conditions shall be binding upon Seller unless specifically agreed to by Seller in writing. If Buyer's purchase order or other correspondence contains terms or conditions contrary to or in addition to the terms and conditions contained in Seller's acknowledgment acceptance of any order by Seller shall not be construed as assent to such contrary or additional terms and conditions or constitute a waiver by Seller of any of the terms and conditions contained in Seller's acknowledgment. Any references to Buyer's purchase order noted in Seller's acknowledgment shall not affect or limit the applicability of the terms and conditions contained in Seller's acknowledgment.

L. LIMITATION OF BUYERS REMEDIES:

Buyer's remedies with respect to any claim arising out of any order or Seller's performance in connection therewith, including without limitation, any claim arising out of any defect or alleged defect in any goods or services furnished by Seller, shall be limited exclusively to the right of replacement of such goods or services or, at Seller's option, to repayment of the purchase price therefor, without in any way limiting the generality of the foregoing in no event shall Seller be liable for any consequential or incidental damages (including, without limitation, any loss of production or anticipated profits) or liability incurred by Buyer with respect to any goods or services furnished or to be furnished hereunder by Seller in no event, regardless of the legal theory on which a remedy is sought, shall Seller's liability exceed the purchase price of the material in question.

M. ASSIGNMENT:

Buyer shall not assign any order or any interest therein without the written consent of Seller. Any such actual or attempted assignment without Seller's prior written consent shall entitle Seller to cancel such order upon written notice to Buyer.

N. WAIVER:

Waiver by Seller of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time.

O. COMPLETE AGREEMENT:

The terms and conditions set forth in Seller's acknowledgment, together with any other documents incorporated herein by reference, constitute the sole and entire agreement between Buyer and Seller with respect to any order, superseding completely any oral or written communications unless the terms thereof are expressly incorporated in Seller's acknowledgment. No additions to or variations from such terms and conditions, whether contained in Buyer's purchase order or any shipping release or elsewhere, shall be binding upon Seller unless expressly agreed to in writing by Seller.