

Terms and Conditions of Sale – TAB Industries, LLC

1. **Applicability.** These terms and conditions of sale (the "**Terms**") are the only terms which govern the sale of the goods, materials or other items ("**Goods**") by the **TAB Industries, LLC** ("**Seller**") to the customer identified in the quotation and/or invoice(s) issued by Seller ("**Buyer**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods, the terms and conditions of such written contract shall prevail to the extent they are inconsistent with these Terms.
2. **Entire Agreement.** The accompanying quotation/confirmation of sale/invoice(s) and these Terms (collectively, the "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such other terms. 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.
3. **Delivery and Shipping Terms.** The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to the availability of parts, materials and finished Goods. Seller shall not be liable for any delays, loss, or damage of Goods in transit.
4. **Delivery** shall be made FOB at 2525 N. 12th Street, Reading, PA 19605 (the "**Delivery Point**").
5. **Title, Risk of Loss and Security Interest.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants Seller a lien on and security interest in and to all of the right, title and interest of 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 Pennsylvania Uniform Commercial Code. Buyer authorizes Seller to file a UCC-1 financing statement.
6. **Price.** Buyer shall purchase the Goods from Seller at the price (the "**Price**") set forth in Seller's quotation or invoice. All Prices are exclusive of all sales, use and excise taxes and duties and charges of any kind imposed by any governmental authority. Buyer shall be responsible for all such taxes, costs, duties and charges.
7. **Payment Terms, Interest, Collection Costs.** Payment terms set forth in Seller's invoices shall be controlling between Seller and Buyer. Unless otherwise **provided** in Seller's invoice, Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments by wire transfer, check or credit card in US dollars. All payments made via credit card shall be subject to an additional 3% surcharge. Buyer shall pay interest on all past due payments at the rate of 1.5% per month, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any past due payments, including, without limitation, reasonable attorney's fees and costs. In addition to all other remedies available under these Terms or at law, Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts due in a timely manner.
8. **Limited Warranty.** For certain Goods, Seller may provide a limited warranty, delivered to Buyer, in writing, at or around the time when such Goods are delivered to Buyer. **SELLER DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
9. **Limitation of Liability.** **SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE SALE OF GOODS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FROM THE GOODS SOLD TO BUYER. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
10. **Force Majeure.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, government ordered shutdown, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
11. **Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the **Commonwealth** of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.
12. **Consent to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America, Eastern District of Pennsylvania or the courts of common pleas in Berks County, Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

13. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.