



Terms and Conditions of Sale

1. Acceptance. All contracts with Niagara Fasteners, Inc. ("Seller") are expressly limited to and made conditional upon Purchaser's acceptance of the terms and conditions contained herein. (The term "Purchaser" as used herein is hereby defined to include the direct purchaser of the goods, its subsidiaries, affiliates, successors and assigns and all third parties who purchase products or components which contain goods manufactured by Seller). Any of the Purchaser's terms and conditions, which are not separately agreed to in writing are hereby objected to and rejected. Objection to any terms and conditions contained herein shall be deemed to have been waived if written notice of such objections is not received by Seller within 10 (ten) days of the date of receipt of the quotation or invoice, whichever is sooner.

Purchaser will in any event be deemed to have assented to all terms and conditions contained herein if any part of the goods described herein is accepted.

Please note particularly the Warranty and Limitation of Remedies provisions set forth below.

2. Warranty and Limitation of Remedies. All goods manufactured by Seller are warranted to be free from defects in material and workmanship under normal use.

THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

In the event of Seller's liability, whether based on contract, tort, negligence, strict liability or otherwise, Purchaser's sole and exclusive remedy will be limited to, at Seller's option, the repair or replacement by Seller of any nonconforming goods for which claim is made by Purchaser in accordance with these terms and conditions or to the allowance of a credit for the portion of the purchase price paid by the Purchaser attributable to the nonconforming goods.

Seller shall not be liable for incidental, which seller hereby disclaims, consequential or special damages, or any other losses, damages or expenses, directly or indirectly arising from the sale, remanufacture, handling or use of the goods or from any other cause relating thereto.

THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLERS BREACH OF THIS AGREEMENT, BREACH OF

WARRANTY, DEFECTS ARISING FROM THE BUYERS DESIGN SPECIFICATIONS, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT WITH RESPECT TO THE PRODUCTS, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE PRODUCT. PURCHASER ACKNOWLEDGES THAT THE QUOTED PRICE OF THE GOODS REFLECTS THE ABOVE-STATED LIMITATIONS OF WARRANTIES AND SELLER'S LIABILITIES; PURCHASER EXPRESSLY ACCEPTS THESE LIMITATIONS IN CONSIDERATION OF THE PRICE TO BE PAID FOR THE GOODS AND AGREES THAT SELLER WOULD NOT SELL THE GOODS TO PURCHASER AT THE QUOTED PRICE WITHOUT THE ABOVE-STATED LIMITATIONS OF WARRANTIES AND LIABILITIES.

Any action brought relating to the goods must be commenced within one year from the date such cause of action arose.

3. Default. Each shipment deliverable under any order accepted by the Seller shall be deemed to be sold under a separate contract, and the party in default in respect to any such shipment shall be liable for such default. But any such default shall not entitle the other party to repudiate the contract in regard to any shipments to be made in the future.

4. Claims, Notice of defects. In the event any goods to be furnished hereunder are claimed to be defective, the Seller shall be given ample opportunity for inspection or upon request shall be furnished with a sample of such goods. Seller shall be liable only to repair or replace defective goods or to allow credit for such item at its option. Any claims must be made within 10 (ten) days after receipt of the goods shipped hereunder.

5. Returned Goods. Goods may be returned upon Seller's written approval. All returned goods must be packaged in Seller's box bearing the original lot identification number of the returned part and must reference a return authorization number provided by Seller. Any credit issued for returned non-defective goods shall be subject to Seller's restocking charge, less the return freight expense covered by the client.

6. Patent or Trademark Infringement. If the goods sold hereunder are to be prepared for manufacture according to the Purchaser's specifications, Purchaser shall defend, hold harmless and indemnify Seller against any claims, liability, costs, or attorney's fees incurred in relation to any claim for patent or trademark infringement.

7. Force Majeure. Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or of suppliers to the Seller including but not limited to failure or delay in transportation, acts of any government or any agency or subdivision thereof, judicial action, labor disputes, fire, accident, or acts of nature, shortage of labor, fuel, raw material or machinery or technical failure. If any contingency occurs, Seller may allocate production and deliveries among Seller's customers.

8. Confidentiality. In the event Purchaser's personnel visit Seller's plant or Purchaser otherwise receives any proprietary or confidential information from Seller, such information shall be retained as confidential by Purchaser and not be used or disclosed to any third

party without the written consent of Seller. Seller retains all rights in any invention, improvement, discovery, or patent it conceives relating to goods delivered hereunder.

9. Prices. Unless otherwise stated, all prices quoted are valid for no more than 15 (fifteen) days from the date of the sales quotation and are subject to change at any time, without notice, to prices prevailing at time such goods are shipped by Seller. Any prices quoted for tooling or similar equipment consist of charges for engineering and development, and do not entitle the Purchasers to ownership or right of removal of such tooling or equipment. If there is a delay in completion of shipment of said order, due to any changes requested by Purchaser or as a result of any delay on Purchaser's part in furnishing information required for completion of the order, the price agreed upon at the time of acceptance of order is subject to change. All prices are FOB Seller's plant unless agreed upon and stated in writing by Seller. Prices are exclusive of all taxes, federal, provincial or local unless otherwise noted. There will be added to the quoted price any sales or other tax or duty which Seller may be required to collect to pay upon the sale of goods quoted. If such amount is not included in invoice of the goods, it may be invoiced separately later.

10. Quantity Shipped. The total quantity of any item of goods shipped by Seller is subject to a tolerance of plus or minus 10 (ten) percent of the total quantity ordered of that item. The total price charged by Seller shall be adjusted to reflect the actual quantity shipped to Purchaser.

11. Delivery. The promised delivery date is the best estimate possible of when the goods will be shipped. Seller shall not be liable for any loss, damage, incidental or consequential damage due to delays.

12. Cancellation. Orders accepted by Seller cannot be cancelled or deliveries deferred except with Seller's consent in writing and upon such terms as will indemnify Seller against loss, including incidental, consequential and special damages. Orders cancelled or terminated by the Purchaser for reasons not the fault of Seller is subject to cancellation charges in addition to actual costs incurred by Seller, including and not limited to inventory, material, set-up and design changes.

13. Engineering and Development. Any equipment constructed or supplied by Seller, including patterns, jigs, dies, gauges and tools, is proprietary to the Seller. Therefore, payment of charges for engineering and development of such equipment which the Seller constructs, designs or requires for use in the production of goods for Purchaser conveys neither ownership nor the right of removal from the Seller.

14. Credit Approval. Shipment and delivery of goods and performance of work shall at all times be subject to the approval of Seller's credit department and Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to Seller. The Seller has sole discretion of terminating the credit line to the Purchaser.

15. Payment Terms. Subject to the provisions of credit approval and unless otherwise stated, terms of payment are net 30 (thirty) days from the date of the invoice, without any offset. On all past-due invoices Seller reserves the right to charge interest, which shall

accrue and shall be payable by Purchaser to Seller at the rate of 18% per annum or at the maximum rate of interest allowed by law, whichever is less.

16. Remedies. The rights and remedies reserved to Seller shall be cumulative and additional to all other remedies provided by law or equity. Seller shall be entitled to recover costs and attorney fees in the enforcement or defense of any rights hereunder.

17. Assignments. Both parties shall assign its rights or delegate its performance hereunder without the prior written consent of the other and any attempted assignment of delegation without such consent shall be void.

18. Entire Agreement. This instrument contains the entire agreement of the parties relating to the subject matter hereof and may not be waived, changed, modified, extended or discharged orally but only by agreement in writing and signed by the party against whom enforcement of any such waiver, change, modification, extension or discharge is sought.

19. Governing Law. This agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the Province of Ontario. Purchaser irrevocably waives to the extent allowed by law (a) trial by jury in any action or proceeding with respect to this agreement, and (b) any objection (including, without limitation, any objection to the laying of venue or based on the grounds of forum non convenience) which it may now or hereafter have to the bringing of any action or proceeding with respect to this agreement in Niagara Falls, Ontario Canada. Nothing herein shall limit the right of Seller to bring proceedings.

20. Inspection. Purchaser shall inspect all goods immediately upon delivery. Ten (10) days after Seller's initial delivery to Purchaser or Purchaser's agent, Purchaser shall have waived all inspection rights and have irrevocably accepted the goods if no written objection to Seller is made by Purchaser as to the price, quality, quantity or condition of the goods, within the inspection period.

21. No Conflicting or Supplemental Terms and Conditions. All contracts for sale of goods including the price quoted are conditioned upon Purchaser's acceptance without change, deviation or supplementation of the foregoing Terms and Conditions of Sale. The acceptance of the prices quoted irrevocably constitutes the acceptance of all of Terms and Conditions of Sale contained herein by Purchaser, and any different or supplemental terms of sales contained on any order form or other writing (including any electronic format) prepared by Purchaser shall be null, void and of no force or effect, unless separately and expressly accepted in writing by an authorized representative of Seller