



## TERMS AND CONDITIONS

1. PARTIES. These Terms and Conditions are attached to and shall be deemed an integral part of the Invoice and Packing Slip issued by A-1 FASTENER, INC., an Ohio corporation, referred to herein as “Seller”, to the person or company indicated on the first page of such Invoice or Packing Slip (“Buyer”). All materials, goods, or work described on the Invoice or Packing Slip, regardless of type, will be referred to as “Products”.
  
2. DELIVERY, CLAIMS AND DELAYS. The part making freight payment shall bear the risk of loss, destruction or damage in the course of transportation. In the event that Seller is paying for the freight the risk of loss, destruction or damage shall pass to Buyer upon delivery to Buyer. All quoted delivery dates are approximate. Seller reserves the right to make delivery in installments. In such event, all such installments will be separately invoice and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. Seller shall have the right to make delivery in partial or single lots. Unless otherwise specified on the face of Buyer’s purchase order, packaging methods, shipping documents and manner, route and carrier of shipment shall be such as Seller considers appropriate.  
  
SELLER SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES OF ANY KIND RESULTING FROM ANY DELAY OR ERROR IN SHIPMENT. Claims for shortage or nonconforming goods must be made in writing to Seller within 30 days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and waiver of all such claims by Buyer.
  
3. PAYMENT. Invoices are due and payable as stated via the terms on the face thereof. Invoices may be submitted as partial shipments are made. If during the period of the contract the financial condition of Buyer deteriorates in such a way that the terms of payment demand full or partial payment in advance before proceeding with the contract. If Buyer fails to make any payment and if Seller incurs any cost for collection then Buyer shall pay to Seller, in addition to any and all other amounts payable, interest at the rate of 18% per annum on any past due amounts and all costs of collection, including but not limited to, any and all reasonable attorney’s fees.
  
4. TAXES AND OTHER CHARGES. Any federal, state or local manufacturer’s tax, retailer’s occupation tax, use tax, sales tax, excise tax, duty, Buyer inspection fee, testing fee and any other tax, fee or charge of any nature

whatsoever imposed by any governmental authority, on or with respect to transaction governed hereby shall be the sole and exclusive responsibility of Buyer. If Seller is required to pay any such tax, fee or charge. Buyer shall immediately reimburse Seller therefore, or in lieu of such payment, Buyer shall provide Seller at the time its purchase order is submitted with a tax exemption certificate or other document acceptable to the authority imposing the same.

5. WARRANTY: MERGER CLAUSE. Seller warrants its products to be free from defects in material and workmanship, under normal and proper use. Products delivered to Buyer deemed to be unacceptable by Buyer for failure to conform to Buyer's warranty may be returned to Seller only upon Seller's prior written authorization. EXCEPT AS EXPRESSLY STATED ABOVE SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR OTHERWISE. ON ANY PRODUCT, OR ON ANY PARTS OR LABOR RFURNISHED DURING THE SALE, DELIVERY OR SERVICING OF ANY PRODUCT.

6. LIMITATION OF DAMAGES AND LIABILITY. EXCEPT AS EXPRESSLY STATED IN SECTION 5 BOVE, SELLER SHALL NOT BE LIABLE TO BUYER OR TO ANY OTHER PERSON, FIRM, OR CORPORATION FOR LOSS OR DAMAGE OF ANY KIND. SELLER WILL UNDER NO CIRCUMSTANCES BE LIABLE TO ANY PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUETNIAL LOSS, INJURY OR DAMAGES, (INCLUDING WITHOUT LIMIT LOST PROFITS) EVEN IF SELLER HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, REGARDLESS OF THE FORM OF ACTION, WHETER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, PRODUCTIONS LIABILITY OR OTHERWISE.

SELLER'S LIABLITY UNDER THE WARRANTY SET FORTH IN SECTION 5 OR IN CONNECTION WITH ANY OTHER CLAIM RELATIONG TO THE PRODUCTS SHALL BE LIMITED TO THE REPAIR, OR AT SELLER'S OPTION, THE REPLACEMENT OR REFUND OF THE PURCHASE PRICE OF ANY PRODUCTS OR PARTS OR COMPONENTS THEREOF WHICH ARE RETURNED TO SELLER. FREIGHT PREPAID AND WHICH ARE DETERMINED BY SELLER TO BE DEFECTIVE IN MATERIAL OR WORKMANSHIP PRODUCTS OR PARTS OR COMPONENTS THEREOF WHICH ARE REPAIRED OR REPACED BY SELLER WILL BE RETURNED TO BUYER FREIGHT COLLECT.

7. LOSS TO BUYER'S PROPERTY; INFRINGEMENT; INDEMNIFICATION. Seller shall not be liable for, and shall have no duty to provide insurance against any damage or loss to any goods or materials of Buyer which are used by Seller in connection with Buyer's order. Buyer shall indemnify Seller against and hold Seller harmless from any and all costs,

expenses, liabilities, losses and damages, including attorney's fee, which Seller may incur in connection with any suit or claim of infringement of any patent, copyright, trademark, or tradename by reason of the manufacture, use or sale of Product or any part, unit or component thereof, or the manufacture or use of the equipment with which such Product is manufactured. If so requested by Seller, Buyer shall, at its expense, appear in and assume the defense of any litigation to which Seller has been made a party that relates to any such infringement.

8. BUYER'S OBLIGATION; RIGHTS OF SELLER. If Seller shall at any time doubt Buyer's financial responsibility, Seller may demand adequate assurance of due performance or decline to make any further shipments except upon receipt of cash payment in advance or security. If Seller demands adequate assurance of due performance and the same is not forthcoming within 10 days after the date of Seller's demand, Seller may, at its option, (i) continue to defer further shipments under this order and/or any other order from Buyer which has been accepted by Seller until adequate assurance is received, or (ii) cancel this order and/or any other orders from Buyer which have been accepted by Seller and recover damages. If Buyer fails in any way to fulfill the terms and conditions on the front or the back hereof, Seller may defer further shipments until such default is corrected or cancel this order and recover damages. Seller shall have a security interest in, and lien upon, any property of Buyer in Seller's possession as security for the payment of any amounts owing to Seller by Buyer.
9. LIMITATIONS OF ACTIONS. Any lawsuit or other action based on breach of this contract or upon any other claim arising out of this sale (other than an action by Seller for any amount due to Seller by Buyer) must be commenced within Ninety Days from the date of the tender of delivery by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within Ninety Days from the date within the warranty period in which the defect is or should have been discovered by Buyer.
10. FORCE MAJEURE. Seller shall not be liable for any damages as a result of any delay due to any cause beyond Seller's control, including and without limitation, an act of God, act of Buyer embargo or other governmental act, regulation or request, floods, riots, explosions, epidemics, fire, accident, strike, slowdown, war (declared or undeclared) or act of terrorism., delay in transportation, and inability to obtain necessary labor, fuels, materials, or manufacturing facilities. In the event of any such delay, at Seller's option, Seller may cancel this contract or may defer the date of delivery of Product for a period equal to the time lost by reason of the delay.
11. ASSIGNMENT. Buyer may not assign any of its rights or obligations hereunder without the prior written consent of Seller.
12. ENTIRE AGREEMENT. This document contains the entire agreement between Seller and Buyer and constitutes the final, complete and exclusive expression of the terms of the agreement, all prior or contemporaneous written

or oral agreements or negotiations with respect to the subject matter hereof being merged herein. By way of illustration and not limitation. Buyer's order shall be deemed to incorporate, without exception, all the terms and conditions hereof notwithstanding any order form of Buyer containing additional or contrary terms or conditions, unless Buyer shall have expressly advised Seller to the contrary in a writing apart from such order form, and no acknowledgment by Seller of, or reference by Seller to, or performance by Seller under, an order of Buyer shall be deemed to be an acceptance by Seller of any such additional or contrary terms or conditions, then such modifications may be made in these terms and conditions only by written instrument signed by one of Seller's officers.

13. SEVERABILITY. In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.
14. OTHER RIGHTS AND REMEDIES. Except as otherwise provided herein, any right or remedies granted hereunder to either party shall be in addition to, and not in lieu of, any other rights or remedies of such party at law or in equity.