

# **Cincinnati Laser Cutting, LLC.**

## **dba Cincinnati Metal Fabricating**

### **Terms and Conditions**

#### **1. Buyers acceptance of Seller's Terms and Conditions:**

The sale of goods hereunder is expressly conditioned upon the terms and conditions contained or referred to herein. No terms or conditions which alter or modify in any way any provision hereof shall be binding unless expressly agreed to in a written instrument signed by Seller's authorized representative. Seller objects to any different or additional terms and hereby rejects any and all such terms, whether contained in previous or subsequent proposals or communications from Buyer.

#### **2. Orders:**

Written orders are preferred to be faxed, e-mailed, or mailed. Orders by telephone are accepted at the risk of Buyer, and shipments made before receipt of written confirmation are for the convenience of Buyer. To avoid the possibility of duplication, Buyer's confirming orders must be clearly marked "Confirmation." Confirmation orders not so marked may at Seller's election be treated as original open orders. Orders cannot be cancelled or modified without Seller's consent. Only orders stamped "Order Entered" by Seller and faxed to Buyer are confirmed received. If Buyer does not receive confirmation within 24 business hours of Buyer's intended receipt of order by Seller, then it is Buyer's responsibility to resend order.

#### **3. Prices:**

Prices proposed by Seller to Buyer prior to Buyer's acceptance thereof, and those prices paid by Buyer hereunder, are confidential information of Seller, and Seller shall take all reasonable actions to keep such price information confidential. Disclosure of such prices to any third party for any reason whatsoever (other than directly in connection with the performance of Buyer's purchase of goods hereunder) is expressly prohibited. We reserve the right to correct any obvious errors in specifications or prices. Prices on orders accepted by Seller are applicable for 30 days and are subject to change thereafter.

#### **4. Taxes:**

In addition to the price quoted for goods sold, Buyer shall pay any tax imposed by any present or future law on the sale of goods covered by this order.

#### **5. Delay/Delivery:**

Seller shall be excused from any failure to perform due to any actions, events, conditions, inactions or any other cause beyond Seller's control in the reasonable operation of its business. Any and all delivery dates given by Seller constitute good faith estimates only. Seller shall not be liable for any failure to meet any specific shipping or delivery date as long as Seller acts in good faith.

**6. Buyers Remedy/Sellers Liability:**

Buyer's sole and exclusive remedy and Seller's absolute limit of liability in connection with any lawsuit, claim or cause whatsoever directly or indirectly relating to or arising out of this transaction with Seller, whether based on contract, tort or any other legal theory of recovery, shall in all cases be strictly limited, at Seller's sole option of either (i) reimbursing Buyer for Buyer's actual direct damages up to the amount of the purchase price of the materials purchased in such transaction or (ii) replacing such allegedly nonconforming materials at the original point of delivery. Any claim for remedy under this Section 6 must be made by Buyer within ninety (90) days of acceptance of the goods by Buyer. As a condition precedent to Seller's obligation to be responsible for damages hereunder, Buyer shall assist Seller in all respects in its attempts to determine the legitimacy and basis of any claims made by or on behalf of Buyer. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, AND EVEN IF THE EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO BUYER OR ANY THIRD PARTY AND ALL SUCH DAMAGES ARE HERBY DISCLAIMED. If Seller elects to repay the purchase price, Buyer must return the goods to Seller at Seller's request. Except for nonpayment by Buyer, any action arising out of this contract must be commenced within one year from the date of the delivery.

THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE GOODS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER USED ALONE OR IN COMBINATION WITH OTHER MATERIALS OR PRODUCTS. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

**7. Patent Infringement:**

If any material is furnished to Buyer's specifications, Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, employees, agents, shareholders, affiliated companies, and their respective successors and assigns against any and all liabilities, fines, penalties, fees, costs, and expenses, including, without limitation, reasonable attorney's fees and costs and other litigations fees, costs and expenses, resulting from or in connection with any claim of infringement of any patent in connection with the processing of such material.

**8. Inspection/Claims:**

Any alleged shortages and/or defective or damaged material received by Buyer in connection herewith must be reported in writing by Buyer to Seller within 10 days of receipt of such material.

**9. Financial Responsibility:**

If in Seller's judgment reasonable doubt exists as to Buyer's financial responsibility, or if Buyer is past due in payment of any amount owing to Seller, Seller reserves the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship, or stop any material in transit, until Seller receives payment of all amounts owing to Seller, whether or not due, or adequate assurance of such payment.

**10. Authorization/Mechanics Lien:**

Seller specifically reserves the right to take any and all actions it deems necessary to protect its right to payment, including, without limitation, recording mechanic's liens, stop notices and payment bond claims, as may be available under applicable state law.

**11. Payments/Finance Charge/Discount:**

This sale of goods shall be deemed made in the State of Ohio. This sale of goods and any dispute arising from the goods or services referenced herein shall be governed by the laws of the State of Ohio, including its provisions of the Uniform Commercial Code. Payment terms are net 30 days unless otherwise stated in writing. Notwithstanding the foregoing and any conflicting provisions in Buyer's purchase order, cash sales, COD sales, and payments made with approved credit cards are not eligible for any prompt payment discount and Buyer shall receive no discount on such sales or payments. A finance charge of the lesser of 1 ½% per month, 18% ANNUAL PERCENTAGE RATE, or the highest rate permitted by law, shall be charged on all amounts unpaid 30 days after the date of this invoice.

**12. Confidentiality**

In connection with the sale of goods hereunder, Buyer may disclose in confidence certain Confidential Information to Seller. Such Confidential Information shall mean all product information provided by Buyer to Seller, including (without limitation) technical information, software, plans, engineering or other specifications, and other proprietary information. Seller shall maintain the confidentiality of such Confidential Information, and shall not disclose Confidential Information to third persons without the prior written consent of Buyer. The obligations of this paragraph shall not apply to Confidential Information:

- a. which at the time of disclosure by Buyer to Seller was in the public domain;
- b. which after disclosure by Buyer to Seller, through no fault of Seller, becomes generally available to third parties by publication or otherwise; or
- c. which was lawfully in the possession of Seller prior to disclosure by Buyer to Seller as evidenced by written records of Seller and which was not directly or indirectly received from Buyer.

Seller shall return to Buyer all Confidential Information at the conclusion of the circumstances for which the Confidential Information was disclosed or upon the request of Buyer. Seller agrees that any of its agents or employees who are given access to Confidential Information shall treat Buyer's Confidential Information with the same standard of care as they do Seller's own Confidential Information.

**13. Default Provisions:**

Any dispute arising between the parties hereto, except for nonpayment by Buyer, shall be resolved by arbitration in Cincinnati, OH in accordance with the rules of the American Arbitration Association, and the award of the arbitrator(s) shall be final and binding upon the parties. In the event the demand for arbitration is filed pursuant hereto, the parties shall have the same rights to discovery under the Ohio Rules of Civil Procedure as if the dispute had been filed

as an original action in an Ohio Court of original jurisdiction and shall be authorized to enforce said rights as if the entire dispute were pending before said court. In no event may any claim by Buyer arising from or relating to any agreement, order or sale of any goods or services referenced herein be brought more than one year after the date of delivery or the date such claim arose, whichever shall be earlier. If any default is made in payment of amounts due for the sale of goods hereunder, and the account is placed in the hands of any attorney for collection, Buyer agrees to pay Seller's reasonable cost of collection and costs under this Section 13, including reasonable attorney's fees. The parties hereby consent to the personal jurisdiction and venue of the federal and state courts located in Hamilton County, Ohio, with respect to any litigation between the parties.

**14. Cancellation:**

Buyer may not cancel any order of goods without Seller's express, written consent. If cancellation is so authorized by Seller, Buyer is responsible for any and all unused goods, Work-in-process, processed material or specially manufactured or purchased materials not normally carried in Seller's inventory.

**15. Headings:**

The headings used in this Agreement are solely for the convenience of the parties and shall have no force or effect upon the interpretation of any provision hereof.