

10/18/2004

TOMLINSON INDUSTRIES

STANDARD TERMS AND CONDITIONS OF SALE

TERMS OF CONTRACT: The provisions as described on an order acknowledgement or invoice issued by Tomlinson Industries with regard to the description, quantity, price of goods ordered, and delivery terms, shall constitute the entire Contract between Buyer and Seller. All terms, conditions and instructions, printed or otherwise, on the Buyer's purchase order are hereby rejected. **ORDER ACKNOWLEDGEMENTS WILL BE PROVIDED ON REQUEST ONLY.** Unless Buyer shall notify Seller in writing to the contrary as soon as practicable after receipt of an order acknowledgement, acceptance of the terms and conditions by Buyer shall be indicated and, in the absence of such notification, the sale and shipment by the Seller of the goods acknowledged shall be conclusively deemed to be subject to the terms and conditions thereof.

FINANCIAL RESPONSIBILITY: Shipments and deliveries shall at all times be subject to the approval of Seller's Credit Department, and at any time seller may require payment in advance or satisfactory security or guarantee that invoices will be paid promptly when due. If Buyer fails to comply with any terms of payment, seller, in addition to its other rights and remedies, but not in limitation thereof, reserves the right to withhold further deliveries or terminate the Contract, and any unpaid amount thereupon shall become due immediately. Terms of payment are set forth on our quotation, order acknowledgement or invoice.

SHIPMENT AND PLACE OF DELIVERY: Tomlinson Industries' goods and materials are sold FOB shipping point and Seller's placement of such goods in the possession of a trucking company, railroad company, or other common carrier at the shipping point specified on the order acknowledgement or invoice shall constitute delivery to the Buyer and all risk of loss in transit shall be borne by Buyer. Excess packing, shipping and transportation charges resulting from compliances with Buyer's request with respect to the use of any agency or method of transportation or any routing other than that which would otherwise have been designated by Seller shall be paid by the Buyer.

DEFAULT OR DELAYS: Seller shall not be liable for any default or delay in the production or delivery of all or any portion of any Contract where such default either directly or indirectly from (a) accidents to, or breakdowns or mechanical failure of, Seller's plant machinery or equipment; strikes or other labor troubles; labor shortages; inability to secure fuel, material, supplies or power at current prices or on account of shortages thereof; fire; riots; flood; war; acts of the public enemy; acts of God; delays of suppliers; delays in transportation or lack of transportation facilities; embargoes; any existing or future priorities, allocations, limitations, restrictions, or other acts required or requested by federal, state or local governments; or any subdivision, bureau or agency thereof affecting the conduct of Seller's business which, Seller, in its judgment and discretion, deems it advisable to comply as a legal or patriotic duty; or (b) any cause beyond the control of Seller. In no event shall Seller be liable for any consequential, special or contingent damages arising out of Seller's default or delay in filling an order.

CANCELLATION: A Contract shall not be cancelable by the Buyer for delays in delivery or other cause until written notification of such intention has been actually received by Seller. In any event, however, Buyer shall be obligated to accept any goods and materials previously shipped for any

10/18/2004

Contract, or any which are in the process of manufacture for the Buyer and which are not part of Seller's standard line of products offered by it to the trade generally in the usual course of its business.

DEVIATIONS IN AMOUNT MANUFACTURED: Goods manufactured by Seller to meet Buyer's instructions, specifications, or requirements which are not included in Seller's standard line of products are subject to a plus or minus deviation of ten (10) percent in quantity and Buyer will accept and pay for such goods at the stated unit price.

INDEMNITY: If any goods sold to Buyer are not used by Buyer in accordance with Seller's catalogs and specifications, Buyer agrees to defend, protect and hold Seller harmless against all suits at law or in equity and from all costs, damages, claims and demands arising out of such use by Buyer.

CLAIMS: Claims for error in weight or shortages of goods must be presented within twenty (20) days from the date of shipment of goods and must state the packing slip number and container number applicable to the claim. Any claim for error in weight or shortage not presented in accordance with this provision will be conclusively deemed waived.

CORRECTIONS: Typographical or clerical errors in a Contract, order acknowledgement, or invoice, including prices, are subject to correction by Seller.

TAXES: Prices specified do not include sales, excise or other taxes arising out of or relating to a Contract or the goods delivered except as otherwise specifically stated on the order acknowledgement or invoice. All such taxes are the responsibility of the Buyer. The Seller shall have the right at any time to separately bill the Buyer for any such tax that the Seller may be called upon to pay.

FAIR LABOR STANDARDS: All goods are produced in conformity with all applicable provisions of the Fair Labor Standards Act of 1938 as amended and any regulations and orders of the United States Department of Labor issued there under.

GOVERNING LAW: The shipping point shall be the place of performance where title passes to the Buyer and payment becomes due. Order acknowledgements and invoices are an Ohio Contract and the rights of all parties and the construction and effect of every provision of the Contract shall be governed by the laws of the State of Ohio.

LIMITATION FOR SUITS: Any controversy or claim arising out of or relating to a Contract, or the breach thereof, must be commenced within one (1) year after the cause of action has accrued.

EXCLUSIVE TERMS: A Contract shall constitute the complete agreement between Seller and Buyer and shall supersede all prior oral or written statements of any kind whatsoever made by the parties or their representatives. No statements subsequent to the acceptance of the order or Contract purporting to modify the terms and conditions of the Contract shall be binding unless consented to in writing to a duly authorized official of the Seller in a document making specific reference to the order.

10/18/2004

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WARRANTY AND LIMITATIONS OF LIABILITY: Seller warrants that the goods manufactured by it have been manufactured in accordance with its standard manufacturing practices and conform to the appropriate product description. Seller further warrants that the goods supplied by it are fit for the ordinary purpose or purposes specified in its catalog when used in accordance with all specifications and instructions set forth in Seller's catalog. Except as stated herein, SELLER MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY. Seller will, at its sole option, credit, repair or replace any goods supplied by it which are defective in workmanship or material and are returned to it within 1 year (12 months) from the date of shipment and any claim not made within this period shall conclusively be deemed waived by Buyer. Credit, repair or replacement will be preconditioned upon examination of the goods by Seller, and, if requested by Seller, return of goods to Seller at its direction and expense. No goods are to be returned to Seller without its written consent. Seller shall not be liable for any expense incurred by Buyer in order to remedy any defect in its goods. Seller shall not be liable for any consequential, special or contingent damage or expense, arising directly or indirectly from any defect in its goods or from the use of any defective goods. THE REMEDIES SET FORTH HEREIN SHALL CONSTITUTE THE EXCLUSIVE REMEDIES AVAILABLE TO BUYER AND ARE IN LIEU OF ALL OTHER REMEDIES.