

Buckeye ShapeForm

STANDARD TERMS AND CONDITIONS OF SALE

1. **WARRANTY** - Company warrants that on the date of shipment to Purchaser the goods will be free from manufacturing defects for a period of ninety days. Purchaser shall have ten (10) days following receipt of shipment of the goods in which to inspect and notify Company that the goods were not as warranted. Purchaser shall grant Company access to the goods at all reasonable times in order for Company to determine any defect in the goods. In the event Company determines in its sole discretion that the goods were not as warranted on the date of shipment, Company will replace the defective goods. Purchaser shall assume all responsibility and expense for removal, and freight in connection with the foregoing remedy. Company and its suppliers shall have no responsibility if the goods have been improperly stored or handled. The foregoing contains Purchasers exclusive remedy against Company and its suppliers for any defect in the goods or for failure of the goods to be as warranted, whether Purchasers remedy is based on contract, warranty, failure of such remedy to achieve its essential purpose, tort (including negligence), strict liability, indemnity or any other legal or equitable theory, and whether arising out of warranties, representations, instructions or defects from any cause.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES (EXCEPT TITLE), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF FITNESS OR MERCHANTABILITY, AND CONSTITUTES THE ONLY WARRANTY OF COMPANY WITH RESPECT TO THE GOODS. UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR OTHER LOSS, OR CLAIMS OF LOSS BY PURCHASER OR PURCHASER'S CUSTOMER UNDER ANY THEORY OF LAW

2. **CUSTOM PRODUCTS** - In the event the goods are not of a kind or color customarily manufactured or carried in stock by Company, Purchaser agrees as follows:

- (a) Delivery of ninety percent (90%) of the quantity of goods specified herein shall constitute full and complete performance by Company;
- (b) In case of an over-run, Company may deliver such over-run up to ten percent (10%) of the order.
- (c) In the event Purchaser terminates, cancels or repudiates an order for custom goods, Purchaser shall pay for those finished custom goods as well as the cost to Company for work in process for unfinished custom goods.

3. **PERFORMANCE; DELAY** - Timely performance by Company is contingent upon Purchaser's supplying to Company, when needed or requested, all required technical information and date, including drawing approvals, and all required commercial documentation. If Company suffers delay in performance due to any cause beyond its reasonable control, including, but not limited to act of God, act or failure of government, act or omission of Purchaser, war, fire, flood, strike or labor trouble, sabotage, or delay in obtaining from others suitable services, materials, components, equipment or transportation, the time of performance shall be extended for a period of time equal to the period of the delay and its consequences. Company shall in no manner be liable for any damages to Purchaser, including incidental and/or consequential damages, for the aforementioned delays.

4. **PATENTS** - Company warrants that the goods covered by this order and the sale or use of them will not infringe upon any United States or foreign letters patent, and Company agrees to defend, protect and hold harmless Purchaser, its directors, its officers, employees, successors and assigns, from all damages and expenses resulting from claims and demands for actual or alleged infringements of any patent by reason of the sale or use of the articles covered hereby. However, in case the materials or goods ordered were manufactured by Company according to Purchaser's design or specifications, Purchaser hereby agrees to indemnify and save Company harmless in similar fashion.

5. **ADDITIONAL TERMS** - Except as expressly stated on the face hereof, this quotation, together with any written instructions issued hereunder any attachments hereto, contains the complete and final agreement between Company and Purchaser and any agreement or other understanding that adds, subtracts, modifies or is in conflict with the terms of this quotation are expressly rejected by Company and shall not be binding upon Company unless made in writing and signed by Company's authorized representative.

6. **TAXES** - Any applicable sales, use, excise, value-added or similar tax or duty will be added to the purchase price and shall be borne solely by Purchaser unless a certificate of exemption is provided at the time the order is placed.

7. **NONCANCELLATION** - Purchaser may not cancel or otherwise terminate for convenience, or direct suspension of manufacture, except with Company's written consent and then only upon such terms as will compensate Company for its engineering, fabrication and purchasing charges and other costs and expenses relating to such cancellation, termination or suspension. Company specifically reserves its rights with respect to repudiation.

8. **GOODS RETURNED FOR CREDIT** - Company will not accept goods for return unless an authorization for such return has been issued by an authorized representative of Company in writing. Only goods currently manufactured by Company, invoiced within the preceding 12 month period and in resalable condition will be considered for return. If Company agrees, at its sole discretion to accept return of goods for credit, the amount of credit will be determined by the value of the original invoice. A restocking fee may be assessed for any goods accepted for credit. Special goods or custom orders fabricated to order are not returnable under any circumstances.

9. **COMPLIANCE WITH LAWS** - Company will comply with all laws applicable to Company during manufacture and sale of the goods. Purchaser will comply with all laws applicable to Purchaser during operation or use of the goods.

10. **GOVERNING LAW** - The laws of the State of Ohio shall govern the validity, interpretation and enforcement of this agreement. The parties irrevocably agree that any action brought to determine the interpret the validity or enforceability of this agreement shall be commenced in the Franklin County Court of Common Pleas.

11. **ASSIGNMENT** - Assignment may be made only with the written consent of both parties.

12. **RISK OF LOSS** - Title to the goods shall pass to Purchaser at f.o.b. point (our dock). Company shall not be responsible for damage to the goods thereafter. All claims for shortages or incorrect items must be made in writing to Company within thirty days after receipt of shipment. Failure to give such notice shall constitute an unqualified acceptance and waiver by Purchaser of all claims for such shortages or incorrect items.

13. **NONRECURRING ENGINEERING COSTS** - Payment by Purchaser for initial charges for dies, tools, jigs, fixtures, patterns and gauges supplied by Company neither conveys ownership nor the right of removal from Company. Ownership, including the right of removal, may be obtained by Purchaser upon agreement between Company and Purchaser for fair reimbursement of the cost of the dies, design, development, experimental work, maintenance and storage. Cost of adaptation, modification or excessive maintenance of tooling will be charged to Purchaser. Dies inactive for a period of three (3) years may be scrapped upon notification to Purchaser.

Kenneth R. Tumblison
President

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