

**BUCKEYE FABRICATING CO.**  
**TERMS AND CONDITIONS FOR PURCHASE**  
**(Last Revised 6/18/19)**

Unless otherwise agreed in writing and regardless of the language in any order acknowledgement, sales acceptance, sales order or other preprinted form, these Terms and Conditions constitute the only Terms and Conditions under which Buckeye Fabricating Co. ("Buyer") is willing to purchase the Product(s) specified on the attached form from the Supplier identified on the same form ("Supplier").

**1. Delivery**

Delivery dates are determined at the time of order placement. Delivery dates are to be strictly followed and may be revised only upon written agreement of Buyer and Supplier. Time is of the essence. Supplier understands that in the event it fails to timely deliver the Product, Buyer will incur substantial damages. Supplier agrees: to pay Buyer for any and all damages incurred by Buyer including, but not limited to, any consequential or incidental damages should Supplier fail to timely deliver the Product. In addition to its other rights, in the event delivery is not timely made, Buyer (i) may direct expedited routing and charge Supplier for any excess costs incurred as a result and (ii) may charge Supplier for any costs incurred by Buyer for delays caused by Supplier's failure to meet such schedules, including but not limited to inbound and outbound premium freight, operational and overtime expenses.

**2. Confidentiality**

In the process of fulfilling the order for the Product(s), Supplier may obtain from Buyer certain information, and designs, processes, and other information relative to the materials, tooling, manufacturing practices, and processes used by Buyer or Buyer's customer that has been marked as being proprietary and/or confidential or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as proprietary and confidential ("Confidential Information"). Supplier shall not disclose to any third parties the Confidential Information, and shall take all appropriate measures to maintain the secrecy and confidentiality of such information. Supplier shall only communicate the Confidential Information to those of its employees who necessarily need it for the purpose of fulfilling the order to produce the Product(s) and who are bound by written undertakings of confidentiality and use commensurate care as set forth in this section. Supplier acknowledges that any breach by it of the confidentiality obligations set forth in this section would cause Buyer irreparable harm for which compensation by monetary damages would be inadequate and, therefore, Buyer shall have the right to an injunction or decree for specific performance, in addition to any other rights and remedies it may have at law or in equity.

**3. Proprietary Rights**

Supplier warrants that no part of the Product(s) provided to Buyer will infringe any patents, copyrights, industrial design rights or other proprietary rights of any third party. Supplier shall defend, indemnify and hold harmless Buyer against and save it harmless from any and all claims arising from or relating to any alleged or actual infringement or violation of any patent, copyright or other intellectual property right arising in connection with the design, manufacture or shipping of the Product(s). To the extent Buyer provides Seller with certain specifications or processes to be incorporated in the production of the Product(s) by Supplier, Buyer grants to Supplier a limited license to use any patent, copyrights, industrial design rights or other proprietary rights of Buyer or Buyer's customer as needed to fulfill the purchase order. Buyer or Buyer's customer, as the case may be, retains ownership of all patent, copyrights, industrial design rights or other proprietary rights and all tools, methods, techniques, manufacturing processes and solutions, standards, and other development procedures and processes, previously developed by Buyer or Buyer's customer that may be incorporated in the production of the Product(s). Except for such limited license Supplier acknowledges that it has no right, title or interest whatever in the copyrights, trademarks or patents of Buyer or Buyer's customer or any part of them (including any modifications of the Process) and acquires no such rights by this Agreement. Buyer shall own all right, title, and interest in and to all items that are conceived, made, discovered, written or created by Supplier personnel alone or jointly with third parties under this Agreement, including the Product(s), whether completed or works-in-progress. The production of the Product(s) any portions thereof, shall be deemed "Works For Hire" for Buyer for all purposes of copyright law, and the copyright shall belong solely to Buyer. To the extent that the Product(s) or any portion thereof does not fall within the specifically enumerated works that constitute "works made for hire" under the United States copyright laws, and to the extent that any Product(s) include materials subject to copyright, trade secret, or other proprietary right protection then by virtue of this provision Supplier irrevocably assigns, without further action, to Buyer all its right, title and interest that it may be deemed to have in and to any of the Product(s)'s elements, exercisable throughout the universe, in perpetuity, and all subsidiary, ancillary and related rights, performing rights, publishing rights, merchandising and commercial tie-up rights

Supplier warrants (i) that all personnel, including employees, agents, consultants and contractors, ("Personnel") who contribute to or participated in the production of the Product(s) either (a) were at such time parties to "work-for-hire" arrangements or

agreements, or similar agreements with Supplier in accordance with applicable federal and state law, that have accorded Supplier full, effective, exclusive and original ownership of all intellectual property thereby arising, or (b) have executed appropriate instruments of assignment, which are still in full force and effect, in favor of Supplier, as assignee, that have conveyed to Supplier full, effective and exclusive ownership of all intellectual property thereby arising; and (ii) In the production of the Product(s), Supplier and its Personnel, who contribute to or participated in the production of the Product(s) will not be in violation of any term of any employment contract, any "work for hire" arrangement or agreement, or any patent or invention disclosure agreement or any other contract or agreement, or any restrictive covenant relating to the use trade secrets or proprietary information of others.

#### **4. Indemnification**

Supplier agrees to indemnify, defend and hold harmless Buyer and its owners, officers, employees and affiliates from and against any and all demands, claims, actions, causes of action, assessments, losses, damages, injuries, liabilities, costs and expenses, including without limitation, interest, penalties and reasonable attorneys' fees and expenses (collectively "Damages") asserted against, resulting to, imposed upon or incurred by Buyer or its affiliates, directly or indirectly related to, arising out of or resulting from (i) Supplier's Production of the Product(s); (ii) a breach of Supplier's representations; or (iii) any failure of Supplier to observe or comply with any applicable laws, rules or regulations related in any fashion to Supplier's production of the Product(s).

#### **5. Warranty**

Supplier warrants that the Product(s) furnished hereunder will be free from defects for a period of one year from the date of delivery to Buyer and will be produced in accordance with the specifications received from the Buyer. Notwithstanding anything to the contrary herein and not in any way affecting or altering the above warranty, all parts and materials purchased by Supplier from a manufacturer, seller or supplier and subsequently incorporated into a system, piece of equipment or tooling will carry the manufacturer's standard warranty. Supplier assigns to the Buyer all rights and claims acquired against seller, supplier or manufacturers of said parts and materials.

#### **6. Conflicting Language**

In the event of a conflict between these Terms and Conditions and/or any other terms and conditions on any other contracts or invoices of Supplier these Terms and Conditions shall control and take precedence.

#### **7. Severability**

The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

#### **8. Choice of Law**

These terms and conditions, along with any other document generated by Buyer shall be construed and interpreted in accordance with the laws of the State of Ohio.

#### **9. Waiver**

The failure by Buyer to exercise any of its rights hereunder or to enforce any of these terms or conditions on any occasion shall not constitute or be deemed a waiver of its rights thereafter to exercise any rights hereunder or to enforce each and every term and condition.

#### **10. Taxes**

Any and all applicable sales, use or other taxes are not included in the proposal pricing and are the sole responsibility of the Supplier.

#### **11. Risk of Loss**

The title and risk of loss on the Products shall pass to Buyer at the FOB Point which in all cases will be Buyer's dock.

#### **12. Packaging**

Supplier will supply the Products in packaging and to the Buyer's standards or as otherwise agreed in writing.

#### **13. Inspection**

Buyer may inspect all Products at all times and places, including during the period of manufacture. Supplier will permit Buyer and/or its agent reasonable access to Supplier's facilities as reasonably necessary for such inspection. All Products remain subject to a final inspection and acceptance after delivery to Buyer.

#### **14. Remedies**

In addition to any remedies available to Buyer and not in limitation thereof, in the event the Products are not produced in accordance with the specifications received from the Buyer, Buyer may reject any Products which do not meet the applicable specifications and may return any Products to Supplier for reimbursement, credit, replacement or correction at Buyer discretion. In the alternative or in addition, Buyer may correct and/or replace such Products at Supplier's cost. Supplier will be responsible for the cost of any packaging, handling and transportation costs Buyer incurs with respect to rejected Products. Buyer may revoke its acceptance of the Products at any time, if a defect which could not have been discovered during Buyer's normal inspection procedures or which is not normally discoverable until the Goods are used substantially impairs the value of the Products to Buyer.

#### **15. Revisions**

Supplier agrees and acknowledges that these Terms and Conditions shall be revised by Buyer from time to time and Supplier agrees that any such revised Terms and Conditions shall be binding upon Supplier.

THE FOREGOING TERMS AND CONDITIONS REPRESENT THE TERMS AND CONDITIONS AGREED TO BY BUYER. NO OTHER TERMS SHALL APPLY, AND ARE HEREBY SPECIFICALLY REJECTED, UNLESS BUYER AND SUPPLIER STIPULATE AND AGREE TO DIFFERENT TERMS IN A WRITING EXECUTED BY BOTH PARTIES UNDER A SEPARATE AGREEMENT. THIS PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON SUPPLIER'S ASSENT TO ALL TERMS AND CONDITIONS IN THE PURCHASE ORDER AND HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE STATED IN THE SUPPLIER'S QUOTATION, PROPOSAL, OR OTHER OFFERING DOCUMENTS. BUYER HEREBY GIVES NOTICE OF OBJECTION AND SPECIFICALLY REJECTS ANY DIFFERENT OR ADDITIONAL TERMS IN ANY RESPONSE TO THIS PURCHASE ORDER. SHIPMENT OF ANY GOODS OR PERFORMANCE OF ANY SERVICES BY SUPPLIER SHALL BE DEEMED TO CONSTITUTE SUPPLIER'S ASSENT TO THESE PROVISIONS.