

**STANDARD TERMS AND CONDITIONS OF PURCHASE OF
MIDWEST INDUSTRIAL SUPPLY, INC.**

(Effective April 1st, 2021)

1. **CONTRACT.** Unless otherwise provided in a written agreement between Midwest Industrial Supply, Inc., (“Midwest”) and the seller (“Seller”), the terms and conditions set forth in this document are intended to establish standard terms and conditions of purchase for all purchases of all Products and Work by Midwest from Seller, and all such purchases are made expressly conditional upon these terms and conditions. For purposes of this Agreement: (a) “Products” mean all materials, equipment, supplies and other goods intended for Seller to provide under this Agreement; and (b) “Work” means all services, labor, data, and other obligations intended for Seller to perform or supply under this Agreement, as specified in the work scope, together with miscellaneous expendable job supplies, installation related equipment, tools, transportation, and facilities necessary for the performance of Seller’s obligations under this Agreement. This document, together with the purchase orders, specifications, and all supplements and attachments thereto issued by Midwest from time to time, shall constitute the entire agreement (“Agreement”) between Midwest and Seller for each such purchase. In the event of any inconsistency between these terms and conditions of purchase and the provisions on the purchase order or on any supplement attached thereto, the provisions contained on the purchase order or on such supplement shall control. Seller’s acknowledgement, commencement of performance to furnish the Products or any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Seller of the Agreement and all of its terms and conditions. When accepted by Seller this Agreement shall constitute a binding contract between Midwest and Seller containing the terms and conditions set forth herein. Additional or different terms provided in Seller’s acceptance of Midwest’s offer which vary in any degree from any of the terms herein are hereby objected to and rejected.

2. **WARRANTIES AND INSPECTION.** Seller expressly warrants: (a) that the Products sold hereunder will conform to contract specifications, drawings, samples, or other descriptions furnished to Midwest by Seller, and will be of good design, material, and workmanship, free from defect, merchantable, and will satisfactorily perform the functions for which intended and fit for their intended use, and will be free and clear of all liens, claims, pledges, charges and encumbrances; and (b) to perform the Work in a good and workmanlike manner, and in accordance with good industry practices. Seller shall furnish all materials, equipment, tools, labor, supervision, supplies, facilities, services and transportation necessary for the successful completion of the Work. Seller shall cooperate, consult, and coordinate with Midwest in the performance of the Work, and shall provide such Work in a timely manner compatible with Midwest’s schedule. Seller shall, prior to the start of the Work, provide to Midwest a schedule describing its plan of operation for the Work and all testing and deliverables of Seller hereunder. Said warranties, however, shall not be deemed to limit any warranties or representations of additional scope given to Midwest from Seller or any warranties implied by law. Seller agrees that all of its warranties shall survive acceptance of and payment for the Products and/or Work and shall inure to the benefit of Midwest, and to all subsequent buyers of the Products or users of the Work. Unless otherwise specified, all Products and Work will be subject to final inspection and acceptance at Midwest’s plant. Payment by Midwest prior to final inspection and acceptance shall not constitute acceptance. Midwest may at its option hold rejected Products for Seller’s instructions and at Seller’s risk, or return them to Seller at Seller’s expense. If any Products or Work do not comply with the warranties set forth in this paragraph 2, Midwest may, at its sole option, and in each case at Seller’s sole expense: (i) reject such Products or Work; (ii) require Seller to repair or correct such Products or Work as necessary to render them in conformance with the foregoing warranties, and consistent with Midwest’s time schedule; (iii) return such Products or Work and receive a full refund of the contract price; or (iv) make any corrections required to cause such Products or Work to fulfill the foregoing warranties and charge Seller for the costs incurred by Midwest thereby. Seller shall reimburse Midwest for all expenses reasonably incurred by Midwest in connection with a breach of the foregoing warranties (including transportation, storage, administrative, and other incidental expenses of Midwest). No replacement of rejected Products or Work may be made by Seller without written authorization from Midwest. The remedies set forth in this Agreement are cumulative, and shall not preclude any other remedy available to Midwest at law or in equity.

3. **PACKING AND SHIPMENTS.** No charge will be allowed for packing or shipping unless designated by Midwest on the purchase order. Shipments will be packaged to secure the lowest transportation costs. Bills of lading must accompany each invoice. Orders not accompanied by packing lists will be conclusively deemed in the amount of Midwest’s count or weight. If Seller’s deliveries are behind the agreed upon schedule, Midwest may elect to have further deliveries made by express shipments and Seller shall bear the difference between freight and express shipping rates. Unless otherwise stipulated on the face of a purchase order or by Midwest in writing domestic orders shall be priced and shipped “FOB destination,” and international orders shall be priced and shipped “DDP destination.” Risk of loss and title to the Products and Work shall pass to Midwest only upon delivery to Midwest’s specified end destination. All shipping terms shall have meaning set forth in the Uniform Commercial Code for domestic sales or in INCOTERMS™ 2010, as published by the International Chamber of Commerce, for international sales.

4. **CHANGES.** Midwest shall have the right at any time before completion of an order to make changes in quantities, in drawings and specifications, in delivery schedules, and methods of shipment and packages. If such changes cause an increase or decrease in price or in the time required for performance, Seller shall notify Midwest thereof within ten (10) days from the date of notification of the change and an equitable adjustment shall thereupon be negotiated. Changes shall not be binding upon Midwest unless evidenced by a purchase order change notice issued and signed by Midwest.

5. **CANCELLATION.** Midwest may cancel an order in whole or in part (a) on account of defects in the Products or Work furnished hereunder; (b) if the Products or Work are not delivered within the time stated in the order; (c) if Seller makes an assignment for the benefit of creditors or a receiver is appointed for Seller; (d) if proceedings in bankruptcy or for corporate reorganization are filed by or against Seller; or (e) upon Seller's failure to comply with any of the terms and conditions of the Agreement.

6. **PRICES, INVOICES AND STATEMENTS.** The contract price or unit prices stated in the purchase order represent the fixed, full amount payable by Midwest under this Agreement. Unless otherwise specified in the purchase order, no additional charge will be allowed for labor, supervision, equipment, materials, supplies, tools, field and office overhead, facilities, utilities, services, transportation, packaging, cartage, and any other of Seller's costs. Seller warrants that its prices hereunder are no higher than prices charged by it for the same or similar items and quantities to any other buyer. Midwest shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. Seller shall keep records of all charges, disbursements, and expenses incurred by it hereunder, and its compliance with laws regulating employee benefits, quality assurance, environmental and safety activities. All invoices received after the 25th of any month will be audited and considered for payment with invoices of the month following. Payment of invoices to obtain discounts shall not constitute a release of Seller from any of Seller's obligations hereunder. Any discount terms provided herein shall date from either the date of delivery at destination or the date of mailing of invoice, whichever is later.

7. **TAXES.** Seller agrees that, unless otherwise indicated herein: (a) the prices herein do not include any state or local sales, use or other duty or tax from which an exemption is available for purposes hereof, and (b) the prices herein include all other applicable federal, state and local taxes in effect at the date hereof. Seller agrees to accept and use tax exemption certificates when furnished by Midwest. Federal Excise Tax, if applicable, must be shown separately on invoice.

8. **MIDWEST'S USE.** Midwest, its successors and assigns, may subject all Products or Work to further manufacture, may combine them with other articles, or sell or put them to any use whatsoever, and no claim for royalties or additional compensation may be made by Seller or anyone also by reason of such manufacture, combination, sale or use. All unpatented ideas, information, designs, devices, prints, drawings and technical data concerning Seller's products, methods or manufacturing processes which Seller discloses or furnishes to Midwest in connection with this order shall, except only to the extent as may be otherwise specifically agreed in writing by Midwest and Seller, be deemed to have been disclosed or furnished as part of the consideration for this order, and Seller agrees not to assert any claims by reason of Midwest's use, duplication or disclosure thereof.

9. **PATENTS AND PROPRIETARY INFORMATION.** Seller warrants that the Products and Work, and the normal use thereof, do not infringe or misappropriate any patent, copyright, trademark, service mark, trade secret, or other intellectual property right of any third party. Seller shall defend, indemnify and hold Midwest, its successors and assigns, harmless from and against any and all actions, claims, liability, costs, damage or expense, including attorneys' fees and other expenses of defense with respect to any claim of patent infringement or the infringement of any proprietary information of third parties arising out of the manufacture, use or sale of the Products or Work called for by this Agreement, provided that this provision shall not apply if any such claim relates to specifications or information furnished to Seller by Midwest.

10. **CONFIDENTIAL INFORMATION.** All disclosures, drawings, specifications, patterns or technical information furnished to Seller by Midwest are the sole property of Midwest and are submitted in confidence upon the understanding and agreement by Seller that they (a) shall not be disclosed or furnished to any third party; (b) shall not be used by Seller in whole or in part for any purpose not designated by Midwest; and (c) shall be returned to Midwest immediately upon Midwest's request. Furthermore, Seller shall make no announcements concerning the fact that Seller has contracted to supply any Products or Work for Midwest without the prior written permission of Midwest.

11. **MIDWEST'S PROPERTY.** All tools, equipment or materials furnished to Seller by Midwest shall be and remain the personal property of Midwest, and whenever practicable, shall be plainly marked by Seller as the property of Midwest and shall be safely stored separately and apart from Seller's property. Midwest's property while in Seller's custody shall be held at Seller's

risk, shall be insured by Seller at Seller's expense in amounts equal to replacement costs with loss payable to Midwest and shall be subject to removal at Midwest's request.

12. **INDEMNIFICATION.** Seller shall indemnify, defend, and hold harmless Midwest, its subsidiaries and affiliates, and their respective agents, employees, successors, assigns, and indemnitees (the "Indemnified Parties"), from and against any and all losses, costs, damages, claims, liabilities, fines, penalties, and expenses (including, without limitation, attorneys' and other professional fees and expenses, and court costs, incurred in connection with the investigation, defense, and settlement of any claim asserted against any Indemnified Party or the enforcement of Seller's obligations under this paragraph 12) (collectively, "Losses"), which any of the Indemnified Parties may suffer or incur in whole or in part arising out of the Products or the Work, the presence of Seller at Midwest's premises, or the actions or omissions of Seller under this Agreement, including, without limitation, Losses relating to: (a) actual or alleged bodily or mental injury to or death of any person, including, without limitation, any person employed by Midwest or by Seller; (b) damage to or loss of use of property of Midwest, Seller, or any third party; (c) any contractual liability owed by Midwest to any third party; (d) any breach of or inaccuracy in the covenants, representations, and warranties made by Seller under this Agreement; (e) the use or sale of the Products or Work called for by this Agreement by Midwest or its customers; and/or (f) any violation by Seller of any ordinance, regulation, rule or law of the United States or any political subdivision or duly constituted public authority; provided, however, that Seller's indemnity obligations under this paragraph shall not apply to any Losses to the extent initiated or proximately caused by or resulting from the sole or concurrent gross negligence or willful misconduct of any of the Indemnified Parties. Seller, for itself, its successors and assigns, hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Seller could preclude its joinder by Midwest as an additional defendant, or avoid liability for damages, contribution, or indemnity in any legal action brought against any Indemnified Party. Seller's obligation to Midwest herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Seller under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Midwest by an employee of Seller or anyone employed directly or indirectly by Seller or anyone for whose acts Seller may be liable.

13. **COMPLIANCE WITH LAWS AND REGULATIONS.** Seller agrees that it will comply with all federal, state and local laws and regulations applicable to the production, sale and delivery of the Products or the furnishings or any labor or services called for by this Agreement, and any provisions required thereby to be included herein shall be deemed to be incorporated herein by reference. Without limiting the generality of the foregoing, Seller certifies that (a) the Products or Work called for by this order have been or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and a certification evidencing such compliance shall be printed, stamped or typed on Seller's invoices; (b) all Products or Work furnished under this Agreement will conform to and comply with the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder; and (c) Seller's performance of its obligations under this Agreement shall be in compliance with the United States Foreign Corrupt Practices Act, the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act and the Export Administration Regulations, including the requirement for obtaining any export license or agreement. Seller shall furnish Midwest with certificates of compliance, where required under such applicable laws or when requested by Midwest. Each invoice rendered to Midwest under this Agreement shall constitute written assurance by Seller that Seller has fully complied with all applicable laws.

14. **WITHHOLDING.** If Midwest has a claim under this Agreement, or under any other agreement between Midwest and Seller, regardless of when it is discovered, including a claim that: (a) Seller's invoice is erroneous; (b) the Products or Work are deficient, defective, or incomplete; (c) a third party claim has been asserted or there is reasonable evidence indicating the possibility of a claim; or (d) Midwest, another contractor, or other party suffers damage or injury which is attributable to Seller; then Midwest may, without notice, withhold payment of, or set off the amount of its claim, costs or loss against, any amount invoiced to it.

15. **ASSIGNMENT.** Except as otherwise expressly provided herein, neither this Agreement nor any interest hereunder shall be assignable by Seller without the prior written consent of Midwest, which may be withheld at Midwest's sole discretion.

16. **WAIVER.** No waiver of a breach of any provision of this Agreement shall be effective to discharge in whole or in part any claim or right arising out of such breach unless such waiver is in writing and signed by Midwest.

17. **TIME OF THE ESSENCE.** Time is of the essence for this Agreement. Failure to tender conforming Products or Work by the delivery date specified herein shall constitute a breach by Seller, and Seller shall have no right to make a later conforming tender except upon prior written authorization of Midwest.

18. **FORCE MAJEURE.** Strikes, fires, litigations, accidents, pandemics, government regulations or other causes beyond the control of Midwest, which shall affect Midwest's ability to receive and use the Products, shall constitute valid grounds for

suspension of shipment upon this order, upon notification to Seller by telegram or letter, and without penalty to Midwest except that cancellation for such causes may not be made without reimbursement to Seller for expenditures actually made for labor and materials upon the authority of this order.

19. **GOVERNING LAW.** This Agreement is to be construed in accordance with the laws of the State of Ohio, without regard to conflict of laws rules thereof.

20. **JURISDICTION.** Midwest and Seller agree that any legal suit, action, or proceeding hereunder shall be brought and resolved exclusively by the State and Federal courts located in Stark County, Ohio, and the courts to which an appeal therefrom may be taken; provided that any party shall have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order. Each of the parties hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue. Legal process in any proceeding may be served on any party anywhere in the world.

21. **RELATIONSHIP OF THE PARTIES.** In satisfying its obligations hereunder, Seller shall operate as and have the status of an independent contractor, and shall not act as or be an agent or employee of Midwest. As an independent contractor, Seller shall be solely responsible for the end result of its work and as such shall maintain daily control over its workers and the means and methods used to accomplish the end result. Seller shall be solely responsible for the employment of workers and shall defend, indemnify and hold Midwest harmless from any claim, demand, loss, cost, expense, or suit alleging the violation or claimed violation of any local, state or federal law, rule or regulation relating to the safety and employment of workers, or requiring the employer to withhold taxes or similar charges from employees' pay. Nothing in this Agreement or in the performance of the Seller's obligations required hereunder shall be construed to create a partnership, joint venture or joint business arrangement between Midwest and Seller.

22. **LIMIT OF LIABILITY.** IN NO EVENT SHALL MIDWEST HAVE ANY LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, FOR ANY PUNITIVE, CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL LOSS OR DAMAGE ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING LOSS OF DATA, PROFITS, INTEREST OR REVENUE OR INTERRUPTION OF BUSINESS, EVEN IF MIDWEST HAS BEEN INFORMED OF OR MIGHT OTHERWISE HAVE ANTICIPATED OR FORESEEN THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

23. **SEVERABILITY.** In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.

[887366v1]