

## **PRODUCT SALES TERMS AND CONDITIONS**

**1. ACCEPTANCE.** Our quote, acknowledgement or acceptance of your order is expressly limited to and made conditional upon your acceptance of these terms and conditions (the "Terms"). If you provide to us any preprinted terms and conditions on any purchase order or other form document, they will be without force and effect unless we agree in writing to modify these Terms or to state that these Terms will not apply. We deem material and object to and reject any terms and conditions which are additional to or different from these Terms, which we have not separately agreed to in writing (except additional provisions specifying quantity, description of the products ordered and shipping instructions). We will deem you to have waived any objection to these Terms if we have not received written notice of such objection from you within ten (10) days of the date of this quote, acknowledgement or acceptance. You will, in any event, be deemed to have agreed to all of these Terms if you accept any part of the products referenced in the quote or order. Our failure to insist on performance of or to exercise any right under these Terms shall not thereafter waive any such term, condition, right or privilege.

You acknowledge that the prices stated are predicated on the enforceability of these Terms, that the prices would be substantially higher if these Terms did not apply, and that you accept these Terms in exchange for such lower prices.

**2. LIMITED WARRANTY.** All products that we manufacture are warranted by us to be free from defects in material and workmanship under normal use and service when installed, used and serviced according to our written instructions. You acknowledge that you alone have determined that the products are suitable to meet your intended use. You shall be solely responsible for the correctness of the plans and specifications that you provide and shall release us and hold us harmless from any damages resulting from improper, inadequate or vague information supplied by you. We have no obligation to inspect or evaluate the work of other parties in any manner or aspect. **THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE WILL NOT BE RESPONSIBLE FOR ANY CONFORMITY WITH ANY STANDARDS, CODES OR REGULATIONS WHICH APPLY TO THE COMBINATION OF OUR PRODUCTS IN YOUR APPLICATION OR USE OF THE PRODUCT.** This warranty is not transferable.

**3. LIMITATION OF REMEDIES.** Your sole and exclusive remedy against us for breach of warranty will be limited, at our option, to our repair or replacement of any nonconforming product for which a claim is made, or to our issuance of a credit for a nonconforming product, in accordance with any instructions we have given you for the return of the product or otherwise. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as we are willing and able to repair or replace the nonconforming product and, in any event, our liability for any damages shall be limited to the purchase price of the nonconforming product. **THIS PARAGRAPH STATES YOUR SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY AND MAY BE PLED AS A COMPLETE BAR TO ANY ACTION IN VIOLATION OF THIS CLAUSE.**

**4. LIMITATIONS ON ACTIONS AND LIABILITY.** All claims or lawsuits against us must be brought within one (1) year from the date the claim accrues. **WE WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM DELAY IN DELIVERY OF THE PRODUCTS OR FOR ANY FAILURE TO PERFORM THAT IS DUE TO CIRCUMSTANCES BEYOND OUR CONTROL. OUR MAXIMUM LIABILITY, IF ANY, FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM OUR BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT WITH RESPECT TO THE PRODUCTS, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCTS. IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES AND PROFITS, OR ATTORNEYS' FEES OR COSTS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS YOUR EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER REMEDY UNDER THESE TERMS FAILS OF ITS ESSENTIAL PURPOSE.**

**5. PAYMENT, PRICES AND TERMS.** Prices, terms and product specifications, including the Terms, are subject to change without advance notice. All prices are net 30; and no cash discounts, back charges, setoffs, retention or counterclaims are allowed without our prior written agreement. In addition to the price specified, you are responsible for any federal, state, provincial, or local excise, use, occupational, or other tax, duty or assessment now in force or to be enacted in the future, assessed against us or you by reason of your order.

**6. SHIPMENTS.** Unless we agree otherwise in writing, shipments shall be by a carrier and by the route selected by us, and all shipments within the United States and Canada shall be made F.O.B. destination, at which time title and all risk of loss will pass to you; provided that, we shall retain, and you hereby grant to us a security interest in any products we ship to you until the full purchase price is paid by you.

**7. DELIVERIES.** The promised delivery date is our best estimate of when the products will be shipped. In the case of deliveries scheduled to be made over an extended period, the price to be paid by you shall be that price in effect at the time of delivery. If you request delivery of product to a job site, you agree to receive, store and protect the products and related materials from damage or loss and provide us, free of charge, with reasonable use of light, heat, water, power, storage space and use of available elevators and hoists as needed.

**8. QUANTITIES.** Quantities of products delivered over an extended number of shipments may vary from the order in amounts not exceeding plus or minus ten percent of each product involved (unless we otherwise agree in writing) and the invoiced price will be adjusted accordingly. Shortages on orders delivered in a single delivery must be claimed by notice to us within one (1) business day after your receipt of the shipment or the shortage will be waived.

**9. INSPECTION AND NOTICE OF CLAIM.** You shall (i) inspect all products upon delivery and prior to installation or use, (ii) give us written notice within one (1) business day after delivery as to any claimed damage, defect or nonconformity of the products; (iii) notify us within one (1) business day after your receipt of any claim from a third party related to our products, and (iv) allow us the opportunity to inspect the product within thirty (30) days after our receipt of the notice. Any claim not reported to us within one (1) business day after delivery of the products or one (1) business day after your receipt of the notice of a claim shall be waived. Except as otherwise agreed to in writing by us, you have no right to return products for credit, cancel existing orders, or delay acceptance of delivery.

**10. INFRINGEMENT CLAIMS.** You will indemnify, hold harmless and defend us and our affiliates against all claims, loss, damage or expenses, including attorneys' fees, arising from any actual or alleged infringement of a patent or other proprietary rights on products manufactured in accordance with your specifications, designs or instructions. You will not assert any claim against us by reason of our use of any information that you disclose to us and any reports or documents you create with respect to the design or manufacture of products.

**11. EXCUSE OF PERFORMANCE.** We will not be liable for any delay in delivery, non-delivery, failures or default in performance of the order or otherwise, in whole or in part, caused by the occurrence of any contingency beyond our control or the control of our suppliers, including but not limited to, failure or delay in transportation, acts of any government or any agency or subdivision thereof, judicial action, labor disputes, fire, accident, or acts of nature, severe weather, product allocation or shortages, shortage of labor, fuel, raw material or machinery or technical failure. If any contingency occurs, we may allocate production and deliveries, if any, among our customers, or, with respect to products, substitute substantially similar materials, in our sole discretion, without liability for doing so.

**12. CREDIT APPROVAL.** We, in our sole discretion, may establish a credit limit for you if you so request. You will furnish to us all financial information reasonably requested from time to time for the purpose of establishing or continuing your credit limit. Shipment and delivery of products will at all times be subject to the approval of our credit department, and we may at any time decline to ship or deliver products except upon receipt of payment or upon terms and conditions or security satisfactory to us. You hereby authorize us to investigate your credit and references.

**13. CANCELLATION AND CHANGES.** You may only cancel or change an order with our written approval. Approved cancellations or modifications will be subject to additional fees and charges.

**14. NO ASSIGNMENT.** You may not assign to an affiliate or other third party any quote or order for products, or any claim related to our products or the Terms.

**15. PROPRIETARY INFORMATION.** You do not and will not acquire ownership or any rights in any of our patents, copyrights, trade secrets, technical data, know-how, processes, inventions, improvements, business plans or policies ("Proprietary Information") under any order, regardless of when such Proprietary Information may be or have been issued, conceived, generated or acquired. You will treat our Proprietary Information as confidential and, except as authorized in writing by us, you will not use, reproduce, or disclose it to third parties and will use best efforts to prevent its unauthorized use, reproduction, or disclosure. Proprietary Information shall not include information already known by you or legitimately disclosed to you by a third party or otherwise legitimately in the public domain.

**16. OUR REMEDIES.** We reserve the following rights and remedies, which shall be cumulative and additional to all other remedies provided by law or equity. Interest on all past-due accounts will accrue and will be payable to us at the lesser of 1-1/2% per month (18% per annum) or the maximum rate allowed by law. If you are in default on any order, we may, in our sole discretion and without prior notice to you, delay shipment, change your payment terms, change your credit limit, refuse to accept new orders, declare any outstanding amounts immediately due and payable, and deduct from any amounts that may be due to you under any order or other arrangement between you and us or any of our affiliates the full amount of your indebtedness to us or our affiliates. We will be entitled to recover costs and attorney fees in the enforcement or defense of any rights under the Terms. Nothing stated herein waives any other rights we may have at law or in equity.

**17. PROGRAMS.** All allowances, rebates, incentives, or other amounts we offer you from time to time (collectively, "Programs") are earned and payable only if your accounts (including those of your subsidiaries and affiliates) are current with all Masco Corporation subsidiaries and affiliates. In addition, Programs are not earned or payable if the ratings issued by any agency such as Standard & Poor's, Moody's or Fitch, relating to your company, parent, subsidiaries, or affiliates are lower than investment grade quality. Any earned payment may be withheld or used in our sole discretion to satisfy any of the accounts or other obligations to a Masco Corporation subsidiary or affiliate.

**18. INDEMNIFICATION.** Any technical assistance and information that we furnish to you in connection with the sale of our products are furnished for your accommodation. You assume all liability for the proper application of such information, using your own technical expertise and know-how. You shall indemnify and hold us and our affiliates harmless from and against all liabilities, losses, claims, costs and expenses (including reasonable attorneys' fees) related to any claim, investigation, litigation or proceeding (whether or not we are a party) which arises or is alleged to arise from your acts or omissions under these Terms, including without limitation, your delivery of plans and specifications, or in any way with respect to our product.

**19. GOVERNING LAW.** All orders shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Michigan without regard to any conflict of laws provisions that might otherwise apply. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms. You agree to exercise any right or remedy in connection with these Terms exclusively in, and you agree to submit to the jurisdiction of the appropriate state or federal court in Ann Arbor, Michigan.

**20. ENTIRE AGREEMENT.** These Terms contain our entire agreement relating to the transactions covered by these Terms. These Terms may not be waived, changed, modified, extended or discharged orally but only by agreement in writing and signed by the authorized representative of the party against whom enforcement of any the waiver, change, modification, extension or discharge is sought. These Terms supersede any and all terms previously published or distributed by us. If any provision of these Terms is not enforceable, that provision shall be effective only to the extent permitted by law and all other provisions of these Terms shall remain.