



Tylek
Industries, Inc.
TERMS AND CONDITIONS

The following terms and conditions will apply to all proposals, quotations and orders for sale by TYTEK INDUSTRIES INC. ("Seller") of its products (collectively, "Products"). ACCEPTANCE BY SELLER OF CUSTOMER'S ORDER, OR CUSTOMER'S ACCEPTANCE OF SELLER'S PROPOSAL, IS EXPRESSLY LIMITED TO AND CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS. SELLER EXPRESSLY REJECTS ALL ADDITIONAL, INCONSISTENT OR DIFFERENT TERMS, WHETHER IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENTS. CUSTOMER ACKNOWLEDGES THAT, NOT WITHSTANDING ANYTHING TO THE CONTRACT CONTAINED IN ITS PURCHASE ORDER OR OTHER DOCUMENTS, CUSTOMER'S RECEIPT AND ACCEPTANCE OF THE PRODUCTS WILL CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS. SELLER'S QUOTATIONS ARE ESTIMATES ONLY AND ARE NOT BINDING ON SELLER. ALL QUOTATIONS EXPIRE AFTER 30 DAYS. ALL ORDERS ARE SUBJECT TO ACCEPTANCE IN WRITING BY SELLER AT ITS OFFICE IN CINCINNATI, OHIO, U.S.A.

1. Customer will pay the purchase price together with any federal, state, municipal or other tax applicable to this sale, including sales, occupation, use, excise, value added and similar taxes, however denominated. Customer will indemnify Seller against, and hold Seller harmless from, all such taxes. Unless otherwise agreed in writing, prices are subject to change after order acceptance if Product production costs change after order acceptance. Unless otherwise stated on the order, payment is due within 30 days after invoice date. Payments more than 30 days late are subject to a finance charge of 2% per month. All payments will be made without setoff or reduction of any kind for any reason. PAYMENTS MADE IN DISPUTE, MADE UNDER PROTEST, OR MADE AS PAYMENT IN FULL, MUST BE SENT TO SELLER AS FOLLOWS: TYTEK INDUSTRIES, INC., 4700 ASHWOOD DR., STE 445., CINCINNATI, OHIO 45241 U.S.A. At Seller's request, Customer will establish an irrevocable letter of credit in favor of Seller in the amount of the purchase price, issued by a bank satisfactory to Seller, confirmed by Seller's U.S. Bank, and in a form satisfactory to Seller. Such letter of credit will permit periodic or multiple draws, will permit Seller to draw cancellation fees as provided herein in the event of cancellation, will be negotiable against the shipping documents specified below, will not limit Seller's choice of port or ocean carrier, and will remain valid for one-hundred eighty (180) days after the last scheduled shipment date of the Products. Except as otherwise agreed by Seller in writing, the sole documents to be required under such letter of credit will be as follows: (i) complete set of clean on-board shipped bill of lading, marked "freight prepaid," made out to order, and endorsed in blank, with notification to be made to the consignee specified by Seller, (ii) insurance certificate in duplicate, (iii) four copies of commercial invoice, and (iv) two copies of packing list describing the Products.
2. Seller will ship the Products FOB (Customer pays freight and insurance) Cincinnati, Ohio. For international sales, Seller will ship the Products FOB (INCOTERMS) place of manufacture. Seller will select the carrier unless the carrier is designated by customer and upon delivery of the Products to the carrier, title and risk of loss will pass to Customer. Any quoted shipment date is approximate. No delay in shipment or delivery will give rise to any liability for damages, including incidental or consequential damages, and Customer by its order waives and releases any such claim.
3. Seller warrants that the Products, when delivered will be free from defects in title, and will be of a kind as described in the order, provided, however, that this warranty (exclusive of title) shall be limited to material and parts found to be defective for which claim is made by Customer in accordance with Section 7. If Seller and Customer have not agreed in writing on specifications for the Products, Seller warrants that the Products when delivered will meet Seller's Inspection Quality Levels for goods of the type sold. In effect on the day of delivery unless Customer has received a sample or model, in which case Seller's warranty will be satisfied if the Products conform either to the sample or model or to Seller's Inspection Quality Levels. If Seller and Customer have agreed in writing on specifications for the Products, Seller warrants that the Products will conform to the specifications in all material respects unless Seller has received a sample or model, in which case Seller's warranty will be satisfied if the Products conform either to the sample or model or to the specifications. Seller's warranty will not extend to any Products that have been subjected to: (a) improper installation or storage; (b) accident, damage, abuse or misuse; (C) modification by any party other than Seller (d) abnormal or unusual operating conditions or applications; (e) operating conditions or applications above the rated capacity of the Products; (f) operating conditions or applications not made known to Seller in writing prior to the date of the agreement; or (g) a purpose or application in any way different from that for which they were designed.
4. THE WARRANTIES SET FORTH IN SECTION 3 ARE THE ONLY WARRANTIES RELATING TO THE PRODUCTS AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM CLAIMS OR OTHERS BY WAY OF INFRINGEMENT OR THE LIKE, OR OTHERWISE. Any other statements, oral or written, inconsistent with the warranties set forth in Section 3 are not binding on Seller. No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation, or warranty concerning the Products.
5. To secure payment of the purchase price and performance of Customer's other obligations to Seller, whether under this order or otherwise, Customer grants Seller a purchase money security interest in the Products. Customer agrees to execute UCC financing statements and other documents requested by Seller to perfect Seller's security interest in the Products.
6. If Customer defaults, without in any manner limiting the damages to which Seller may be entitled, Customer will pay on demand the costs of collection, including reasonable attorneys' fees. "Costs of collection" include cost of enforcing or contesting any security interest in Customer's property, including the Products, together with the costs of removing, repairing and reselling any Products.
7. Notice of claim, including a claim for defect in material or workmanship, must be given to Seller in writing within 30 days after receipt of the Products. Seller reserves the right to inspect an alleged defect at Customer's facility before any claim can be allowed and before adjustment, credit, allowance, replacement or return will be authorized. Customer will not return any Products unless Customer has first obtained a return authorization from Seller. Seller's liability with respect to such defects will be limited to the replacement, free of charge, of parts returned at Customer's expense F.O.B. Sellers plant and found to be defective by Seller. IN NO EVENT WILL SELLER BE LIABLE FOR SPECIAL INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES FOR INJURY TO PERSONS OR PROPERTY, LOST PROFITS OR REVENUE, LOST SALES OR LOSS OF USE OF ANY PRODUCTS. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER WILL BE THE REPLACEMENT OF DEFECTIVE PARTS AS PROVIDED HEREIN OR REFUND OF THE PURCHASE PRICE FOR DEFECTIVE PRODUCTS, AT SELLER'S SOLE OPTION. SELLER'S LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S ORDER, SHALL IN NO CASE EXCEED THE PURCHASE PRICE SET FORTH IN THE ORDER.
8. Customer may cancel any order prior to shipment by written notice to Seller, in such event. Customer will pay to Seller the amount reasonably determined by Seller to Indemnify Seller against all loss resulting from such cancellation.
9. Customer will reimburse Seller for a preparatory work charge for the cost of dies, tools and gauges used to manufacture the Products as follows: one-half upon acceptance of the order, and one-half upon Customer's approval of the sample. Unless otherwise agreed in writing, all such tooling will be and remain Seller's property and Customer will have no interest in such tooling.
10. Customer will hold Seller harmless against any expense, loss, or damage resulting from actual or alleged infringement or violation of any patent, copyright, trademark or other intellectual property right as a result of Seller's compliance with Customer's designs, specifications or instructions. Customer shall further hold Seller harmless against liability or obligation with respect to any expense, loss or damage resulting from Products, parts or materials being improperly installed or stored, subjected to accident, damage, misuses or abnormal or unusual operating conditions or conditions not made known in writing to or contemplated by Seller at the time of agreement of sale, or applied or used for a purpose or installation other than or at variance in any degree from that for which designed or operated in any manner or degree beyond their rated capacity.
11. Customer may not assign this agreement or any interest herein without Seller's prior written consent.
12. These terms and conditions constitute the entire agreement between Seller and Customer relating to the Products. Any certification by Seller by separate writing as to compliance of material and parts with specifications, blueprints, part numbers, quantity, test or otherwise will in no way increase or vary Seller's obligations or liability hereunder. No modification or waiver of any term or condition of this agreement will be effective unless in writing signed by authorized representatives of Customer and Seller.
13. These terms and conditions will be construed and enforced in accordance with the laws of the State of Ohio, U.S.A., without regard to conflicts of law principles. The applicability of the U.N. Convention on the International Sale of Goods is hereby expressly excluded. Customer hereby agrees to the exclusive jurisdiction of any state or federal court located within Ohio, provided, however, that nothing contained herein will prevent Seller from bringing any action or exercising any rights against Customer or its property within any other state or nation. Any legal action between the parties relating to the Products or this agreement must be brought within two (2) years after the cause of action arises or be forever barred. If any provision hereof is held to contravene any applicable law, such provision only shall be deemed reformed to the extent necessary to conform to such law.

