



## Terms & Conditions of Purchase

- 1. Offer and Acceptance; Controlling Terms.** These Terms and Conditions of Purchase (“Terms and Conditions”), together with any purchase order (“Purchase Orders”) provided by Elgin Fasteners Group (“Elgin”) to any provider of products or services (“Seller”) constitute an offer to purchase by Elgin and are not an acceptance of any offer or terms which may have been submitted by Seller. Seller may accept this offer to purchase and shall be bound to supply the applicable products in accordance with these terms and conditions either by execution of the acknowledgment copy of the order, or acceptable electronic transmission, delivery of the products to Elgin or by any other statement, act or course of conduct which constitutes acceptance under applicable law. Upon acceptance, this order shall constitute the entire agreement (the “Agreement”) between the parties (except for any additional warranties given by Seller), superseding any and all previous or contemporaneous communications and negotiations. Unless specifically agreed to in writing by Elgin, signed by a duly authorized representative of Elgin, no additional or different term or condition (except additional warranties given by Seller) of any quotation, acknowledgement, invoice or other form supplied by Seller shall become part of this Agreement, notwithstanding Elgin’s failure to specifically object to such terms or conditions. **IT IS AGREED THAT THESE TERMS AND CONDITIONS SHALL GOVERN ALL PURCHASES BY ELGIN FROM SELLER.**
- 2. Prices.** Unless otherwise indicated in this Agreement, the price stated on the applicable purchase order (the “Purchase Price”) shall include all applicable sales taxes, and any other charges with respect to which the parties have agreed that Elgin shall be responsible. The Purchase Price shall be considered a firm, fixed price for the duration of the applicable Purchase Order. Elgin shall be subject to no charges or expenses in excess of the Purchase Price.
- 3. Shipping.** Unless otherwise agreed, shipping terms are F.O.B. Seller’s U.S. point of distribution (under U.C.C. shipping terms). All Products must be shipped in accordance with the shipping instructions stated on the applicable Purchase Order or as otherwise specified by Elgin including without limitation, with respect to the required delivery date. Shipping charges and insurance shall be paid by Elgin unless otherwise agreed by the parties in the applicable Purchase Order, and title shall pass to Elgin once the Products are loaded on the carrier. Seller shall package the products in accordance with standard commercial practices or as otherwise directed by Elgin.
- 4. Delivery.** Time is and shall remain of the essence in the delivery of Products ordered by Elgin. Products must be delivered on date specified in the applicable Purchase Order. Seller shall notify Elgin immediately if at any time it appears that the required delivery date may not be met and shall specify the reasons therefor and the steps being taken to correct the problem and the new anticipated delivery schedule. Elgin may, at its option, either accept the new delivery schedule or terminate the order, or exercise any of its other remedies set forth in



Section 8 hereof. Elgin's acceptance of late delivery shall not constitute a modification of this Agreement or a waiver of Elgin's right to reject deliveries as set forth herein.

- 5. Changes.** No change in modification, variation or revision of these Terms and Conditions or any Purchase Order, including the quantities and prices contained therein, as applicable, shall be valid unless in writing and signed by Elgin. If, in Seller's good faith opinion, changes requested by Elgin would affect delivery, the price to be paid by Elgin, or any other agreed upon term between Elgin and Seller, Seller shall notify Elgin immediately and negotiate an adjustment, which adjustment shall be at Elgin's discretion to accept or reject.
- 6. Cancellation of Purchase Orders.** Elgin may at any time terminate a Purchase Order in whole or in part upon written notice to Seller. Seller shall then be entitled to reasonable termination charges equal to a percentage of the Purchase Price which reflects the actual amount of work performed prior to termination plus direct out-of-pocket expenses actually incurred by Seller as a result of such termination, up to a maximum of fifty-percent (50%) of the Purchase Price. Seller shall provide Elgin with reasonable supporting evidence reflecting such charges. The foregoing termination charges shall be Seller's sole and exclusive remedy with respect to canceled Purchase Orders.
- 7. Inspection and Rejection.** All Products are subject to testing and approval by Elgin after delivery. Elgin may reject any Products which do not conform to the Warranty provided in Section 8 hereof, or which are late or with respect to which there is an error. In the case of rejection, Elgin the remedies set forth in Section 9 hereof shall be available to Elgin in its discretion. Exercise of these remedies shall not be exclusive of any other remedies provided in law or equity or which are otherwise available to Elgin.
- 8. Warranty.** Seller expressly warrants that (i) the Products to be delivered by Seller will conform to the description set forth in each applicable Purchase Order and any other specifications provided by Elgin, (ii) the Products will be merchantable, of good quality and workmanship and free from defect, and (iii) the use of any of the Products will not infringe on any third party rights, including, without limitation, any patent, trademark, copyright, trade secret or other intellectual property rights. Seller represents and warrants that in performing its obligations under any Purchase Order it will be in compliance with all applicable federal, state and local laws, rules and regulations. These warranties shall survive acceptance and payment, and run to Elgin, its successors, assigns and customers.
- 9. Remedies.** In the event of rejection, breach of the Warranty set forth in Section 8 hereof, non-delivery, partial delivery, or late delivery or other error in shipment, Elgin may at its option (i) cancel the applicable Purchase Order without liability therefor, (ii) require Seller to replace the Product, (iii) replace the Product in the open market after due notice and within a reasonable time and recover from Seller the difference between the market price of the Product at the time of replacement and the Purchase Price, or (iv) obtain any other remedy or relief provided by law including, but not limited to, the right to a setoff against any amount Seller is due from Elgin or its affiliate companies on any Purchase Order or otherwise.



Deliveries in excess of those authorized by Elgin shall be at Seller's risk of loss, may be returned to Seller or disposed of by Elgin without incurring any liability to Seller and Seller shall pay Elgin for all expenses, including transportation expenses, in connection with such deliveries.

- 10. Indemnity.** Seller shall indemnify and hold harmless Elgin and customers of Elgin from and against any and all claims, demands, causes of action, actions, liabilities, losses, damages and expenses, including attorneys' fees (including without limitation actual, general and special damages for injuries or damage to any person or property) arising out of: (a) a breach of any term or condition of any Purchase Order by Seller, its employees, agents or representatives, (b) any breach of Seller's representations, warranties, or obligations hereunder, including, without limitation, any breach of any express warranty provided in Section 8 herein, or (c) any wrongful act or omission of Seller, its employees, agents or representatives hereunder. In any matter to which this paragraph applies, Elgin shall have the right to select and retain counsel of its own choosing, all at Seller's expense, and to participate in the defense.
- 11. Tools and Materials.** Unless otherwise agreed in writing all tools, equipment or material of every description furnished to Seller by Elgin or specifically paid for by Elgin, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Elgin. Such property, and wherever practical each individual item thereof, shall be plainly marked or otherwise adequately identified as Elgin's property and shall be safely stored separate and apart from Seller's property.
- 12. Confidentiality.** Seller agrees to: (i) hold Confidential Information (as defined below) in confidence and refrain from disclosing Confidential Information, or transmitting any documents or copies of documents, containing Confidential Information, to any other party except as permitted under the terms of this section; (ii) use Confidential Information only to assist Seller in its supplying the products or services to Elgin and (iii) not disclose any Confidential Information except to Seller's employees and representatives who need such information for the purpose of fulfilling obligations for Elgin, provided, however, that Seller shall be responsible for any breach of the terms of this section by them. Seller shall use at least the standard of care with respect to protecting Confidential Information that it accords its own proprietary and confidential information. Seller shall notify Elgin if it receives a court order or other legal process commanding production or disclosure of Confidential Information and Seller shall cooperate with and assist Elgin in obtaining a protective order. For the purposes of this Agreement, "Confidential Information" means any and all non-public information, in whatever format, regarding Elgin and Elgin's business, including, without limitation, product designs and specifications, drawings, manufacturing methods and information, proprietary information, trade secrets, marketing information and plans, customer lists and other customer information, that Elgin provides to Seller, its employees or Sellers, or that Seller, its employees, or Sellers learn, encounter, or obtain possession or knowledge of in the course of providing the Products or otherwise in connection with this



Agreement or a Purchase Order. Seller's obligations hereunder shall survive termination of this Agreement.

- 13. Ownership.** Any and all Confidential Information or other intellectual property furnished by Elgin to Seller hereunder or any Purchase Order is and shall remain the sole property of Elgin. Nothing contained herein or in any Purchase Order shall grant or otherwise provide Seller with any rights or interest in any such information or intellectual property. In the event that Seller manufactures Product's based on Elgin's specifications or drawings, Seller acknowledges and agrees that any and all products, designs, derivative works, information and other results of Seller producing and providing products or services (collectively, the "Work Product"), shall be considered "works made for hire" pursuant to 17 U.S.C. § 201 (the Copyright Act) and as such is a work specially commissioned for use by Elgin. All worldwide rights, title, and interest in and to any and all Work Product, including, without limitation, each and every discovery, invention or improvement that may be conceived or developed as a result of or in connection with Seller producing and providing the Work Product, shall be the sole property of Elgin. Seller hereby agrees to assign, and does hereby assign, to Elgin all worldwide rights, title, and interest in and to all such Work Product, including any intellectual property contained therein. Seller shall if requested by Elgin execute all documents and perform all other acts necessary, in the discretion of Elgin, to evidence Elgin's ownership of the Work Product and the above-mentioned proprietary rights therein.
- 14. Subcontracting.** Seller shall not procure, or contract for the procurement of, any item covered by a Purchase Order in completed or substantially completed form, or any service to be performed by Seller, without first securing the written approval of Elgin.
- 15. Events of Default.** Seller shall be deemed to be in default hereunder if it violates any of the terms this Agreement or of any Purchase Order, if it fails timely to perform any of its obligations, or if it performs or fails to perform any other act, whether pursuant to an agreement or otherwise, which gives Elgin reasonable grounds to feel insecure with respect to Seller's future performance under a Purchase Order or this Agreement. Seller further shall be deemed to be in default hereunder upon the occurrence of any of the following events, or of any other comparable event; insolvency of the Seller; Seller's filing of a voluntary petition in bankruptcy; the filing of any involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for Seller provided such appointment is not vacated within thirty (30) days from the date of such appointment; or the execution by Seller of an assignment for benefit of creditors. Upon default by Seller hereunder, Elgin may terminate any or all outstanding Purchase Orders without liability, and exercise any rights and remedies as may be provided hereunder or by operation of applicable law or at equity.
- 16. Assignment.** Seller may not assign a Purchase Order or this Agreement or any of its rights or obligations thereunder or thereunder to any third party without Elgin's prior written



consent. For purposes of this provision, a merger, stock sale or other transfer by operation of law shall be deemed an “assignment” for which consent is required hereunder.

**17. Governing Law and Forum.** This Agreement will be interpreted according to the laws of the State of Ohio. The parties expressly disclaim the applicability of the United Nations Convention on Agreements for the International Sale of Goods. Seller hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Ohio and of the United States of America located in Ohio for any proceedings relating to this Agreement (and agrees not to commence any proceeding relating thereto except in such courts). Seller hereby irrevocably and unconditionally waives any objection to the laying of venue, and agrees not to claim that any proceeding brought in any such court has been brought in an inconvenient forum.

**18. Severability.** In the event a provision of this Agreement is determined to be invalid, illegal or unenforceable, it will not affect the validity, legality or enforceability of any other provision of the Agreement and the parties agree that the remaining provisions will be deemed to be in full force and effect.

**19. Modifications, Complete Agreement.** No modifications of the Agreement will be effective unless in writing and signed by authorized representatives of the parties. No course of performance or any course of dealing or usage of trade shall vary the express terms hereof. Except as otherwise expressly set forth herein, this Agreement constitutes the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Agreement.

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