



Terms & Conditions of Sale

- 1. General.** The terms and conditions (the “Terms”), together with those contained in any quotation or proposal (a “Quote”) of Elgin Fasteners Group (“Seller”), constitute the entire agreement (the “Agreement”) between you, Elgin’s customer (“Buyer”) and Seller related to the sale of the good specified in the Quote or otherwise (the “Products”). No change in or modification of this Agreement shall be binding upon Seller unless the change or modification is in writing and signed by Seller. Seller hereby rejects any term or condition of any order, confirmation or other document sent by Buyer (whether before or after date hereof). Buyer’s acceptance of a Quote, submission of a purchase order, or use by Buyer of any Products provided by Seller will constitute Buyer’s acceptance of the terms and conditions of this Agreement.
- 2. Prices.** The prices set forth in any Quote provided by Seller are firm for a period of thirty (30) days from the date of the initial Quote. The offer contained in the Quote, including pricing, shall lapse unless Seller receives an order in response to such Quote prior to the expiration of the thirty (30) day period in the manner specified therein (if any). Seller shall be under no obligation to honor any orders or the terms of any Quotes with respect to which orders are received after such period.
- 3. Payment.** Payments are due net thirty (30) days following the applicable invoice date. Seller reserves the right to establish and adjust credit terms applicable to Buyer, including without limitation, the right to require payment in advance or to require C.O.D. payment. All payments due hereunder which are delinquent for thirty (30) days shall bear interest at the maximum legal rate from and after that date. Invoices issued by Seller will be paid by Buyer regardless of disputes relating to other invoices, and Seller waives the right to assert offsets or counterclaims with respect to such invoices. All payments by credit card will be assessed a 4% processing fee.
- 4. Security for Payments.** To secure payment of all of Buyer’s payment and performance obligations to Seller arising under this Agreement, Buyer grants Seller a purchase money security interest in all Products provided by Seller hereunder or under any Quote and the proceeds thereof. Buyer shall cooperate with Seller in preserving and perfecting Seller’s security interest in the Products and Buyer shall promptly execute and deliver to Seller such agreements, documents and instruments as Seller may require to perfect and maintain the validity, effectiveness and priority of the security interest created or intended to be created by this Agreement. Buyer authorizes Seller to file one or more financing or continuation statements and amendments thereto, relating to all or any part of the Products covered hereby.
- 5. Taxes and Duties.** In addition to the purchase price, Buyer shall pay all sales, use and excise taxes, tariffs, duties and other charges imposed by any country, state or other political subdivision in connection with the sale of the Products. For tax purposes, title to the Products shall pass from Seller to Buyer upon shipment, whether by common carrier, by Seller’s or Buyer’s own trucks or otherwise.



- 6 Shipping Terms and Risk of Loss.** Unless otherwise agreed in writing, all sales are F.O.B. Seller's plant (under U.C.C. shipping terms). Seller reserves the right to select carrier. Prior to delivery of the Products to the carrier at the F.O.B. point, the risk of loss or damage thereto shall be borne Seller. At and after the delivery of goods to the carrier at the F.O.B. point, the risk of loss or damage thereto shall be borne by Buyer. Buyer is responsible for the costs of shipping and insurance.
- 7. Export/Import Documentation; Compliance with Laws.** Buyer shall, at its sole cost and expense, be responsible for obtaining all licenses and permits and for satisfying all formalities as may be required to export the goods outside of the United States and to import them into any other country in accordance with then prevailing laws, rules and regulations ("Export/Import Control Laws"). Buyer shall at all times (i) conduct its activities in strict compliance with all applicable laws, rules, regulations and governmental orders; (ii) pay any and all taxes, fees and other charges required by such laws, rules, regulations and orders; and (iii) have and maintain in full force and effect any and all licenses, permits, authorizations, registrations and qualifications from all governmental ministries, authorities and agencies. Buyer shall not, directly or indirectly, do or fail to do anything that will or could constitute a violation of the Export/Import Control Laws or other laws and regulations of similar purpose, applicable in the United States or any other country having proper jurisdiction. Buyer is aware that certain laws of the United States, which are applicable to Seller, including but not limited to, the Foreign Corrupt Practices Act, impose penalties on United States persons that participate directly or indirectly in making payments to any foreign government official, foreign political party or candidate, or foreign political office. Buyer represents, warrants and covenants that it shall not offer or promise to make any payment, in currency or property, to (i) any government official, political party, political candidate or political office or (ii) any third person, firm or entity that in turn will make a payment to any government official, political party, political candidate or political office. Buyer shall, upon Seller's request, supply affidavits of compliance with its obligations under this Section.
- 8 Delivery Dates.** All shipping dates for Products sold hereunder or pursuant to any Quote are approximate. Seller will use commercially reasonable efforts to ship goods in accordance any agreed upon delivery schedules; but Seller shall not be liable for damages whether general, consequential or otherwise, or for delays in shipping.
- 9. Quantities.** Whenever the Seller's supply of Products is insufficient to meet order requirements, Seller may keep its available supply for its own use or allocate it for its own use and among its Buyers, including those not under contract, on such basis as Seller determines, and Seller shall not be liable to Buyer for failure to deliver all or any part of the quantity ordered. Additionally, if for any reason Seller is unable to ship complete orders, Buyer shall accept partial deliveries and Seller shall have reasonable time from and after the due date to deliver in full without any liability to Buyer. Buyer agrees that Seller may ship a reasonable quantity of goods in excess of the quantity ordered or may consider a contract complete with a reasonable under-shipment. Such excess or shortage will typically not exceed ten percent (10%) of the quantity specified in the Quote.



- 10. Suspension or Cancellation of Orders.** If, for any reason whatsoever, Buyer shall cancel or suspends an order or deliveries thereunder for more than thirty (30) days, Buyer shall pay Seller (i) for the Products which have been completed at the time of such interruption, the full price set forth in the Quote or as otherwise agreed upon by the parties, and (ii) for the Products which have not been completed or have not been started, the costs to Seller plus Seller's anticipated gross profit.
- 11. Change Orders.** Seller may notify Buyer of, or Buyer may request, changes to an order. Seller will make commercially reasonable efforts to consider change requests but shall not be obligated to accommodate all changes. Should any changes cause an increase or decrease in the price or in the anticipated delivery schedule or otherwise, Seller will submit to Buyer a revised order (each a "Change Order"). Seller will not be responsible for any requested changes unless both parties have executed a Change Order.
- 12. Inspection.** Buyer shall have a period of five (5) business days to inspect all Products after delivery. Any claim for rejection of the Products based on breach of the Warranty provided in Section 13 hereof or other error in the delivery must be made by Buyer to Seller in writing within five (5) business days after the Products are delivered. Failure to make such claim within the stated period shall constitute an irrevocable acceptance of the Products.
- 13. Limited Warranty.** Seller warrants to Buyer for a period of twelve (12) months from the date of shipment that the Products conform to the description set forth in the Quote and are free from defects in material and workmanship (the "Warranty"). **THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF NON-INFRINGEMENT, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR ANY OTHER MATTER. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY.** Buyer is required to observe all relevant laws, regulations and requirements of governmental or other regulatory authorities relating to Buyer's use of the Products. Seller assumes no liability for any infringement of intellectual property or violation by Buyer of any law, regulation or requirement relating to Buyer's use of the Products. Seller shall have no liability for defects, whether hidden or apparent, resulting from the improper use, processing or treatment of the Products by parties other than Seller. Buyer shall be liable for any loss resulting from any failure to apply all professional standards, customary instructions and written instructions from Seller, if any, in relation to any of the Products.
- 14. Remedies.** Any claim regarding breach of Warranty must be received by Seller before the expiration of the warranty period. Seller reserves the right to inspect and investigate the alleged breach prior to any remedy being provided. Seller may require Buyer to return the allegedly defective Product to Seller for inspection at Buyer's cost. Seller reserves the right to charge reasonable amounts for travel and labor associated with investigation of invalid claims. Seller's sole liability for Products in the case of breach of Warranty, or under contract, tort or any other basis, is limited to either repair or replacement of the Product or a refund of the



purchase price, at Seller's sole option. The foregoing are Buyer's sole and exclusive remedies hereunder.

- 15. Materials and Tooling.** Unless otherwise agreed in writing, all materials supplied by Buyer and all tooling and equipment required for the manufacture of the Products shall become and remain the sole property of Seller, notwithstanding tooling charges, if any, to Buyer. Seller may dispose of any such material, tools, and equipment in any manner it sees fit without accounting to Buyer therefor or in the proceeds thereof.
- 16. Intellectual Property.** All specifications, documentation and any other intellectual property involved in the manufacturing the Products is the property of Seller, except to the extent Buyer has supplied specifications, drawings or other intellectual property to Seller. Seller assumes no liability whatsoever with respect to Buyer's intellectual property.
- 17. Indemnification.** Buyer shall indemnify, defend and hold harmless Seller from all claims, liability, damages, and expenses (including attorneys' fees) suffered by Seller, whether or not involving a third party claim, arising out of (a) Buyer's breach, (b) Buyer's possession, use, handling, storage, sale, processing or any disposition of the goods, (c) Buyer's errors, omissions, negligence or other wrongful conduct of Buyer and its Buyers, users, agents or subcontractors, and (d) any liability, claim or expense incurred by Seller relating to Buyer or the Products sold to Buyer for which Seller is not expressly liable hereunder. In any matter to which this paragraph applies, Seller shall have the right to select and retain counsel of its own choosing, all at Buyer's expense, and to participate in the defense.
- 18. Limitations of Liability.** SELLER SHALL NOT HAVE ANY LIABILITY TO BUYER OR ANY OTHER PERSON OR ENTITY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OF ANY DESCRIPTION, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR LOST PROFITS, WHETHER ARISING OUT OF WARRANTY (INCLUDING ANY IMPLIED WARRANTIES), BREACH OF CONTRACT, STRICT LIABILITY, NEGLIGENCE, OTHER TORT, OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER SELLER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF RELATED TO THE EQUIPMENT OR SERVICES, AS APPLICABLE, SOLD TO BUYER, EXCEED THE TOTAL AMOUNTS PAID BY BUYER FOR THE PRODUCTS UNDER THE APPLICABLE QUOTE PURSUANT TO WHICH THE CLAIM RELATES. No action may be brought by Buyer against Seller after one (1) year from the date hereof, and Buyer acknowledges and agrees that this provision shall be grounds for dismissal of any suit or claim asserted by Buyer after such time.
- 19. Force Majeure.** Seller will not be liable to Buyer for any delay or failure of delivery of any Products or other nonperformance caused in whole or part by any contingency or event beyond Seller's reasonable control, including, without limitation, acts of any government, war, riots, acts of God, machinery breakage, or any shortage of or inability to secure labor, labor strikes, transportation facilities, fuel, energy, raw materials, supplies, or machinery at reasonable prices



or from regular sources. In the event of the occurrence of any of the foregoing, Seller may distribute its available goods and material among its Buyers on such a basis as Seller deems fair and equitable, without liability to Buyer.

- 20. Confidentiality.** All specifications, documentation, pricing information and any other confidential or proprietary information (“Confidential Information”) of Seller are the property of Seller. Confidential Information may be provided solely for the purpose of facilitating orders and on the express condition that Confidential Information of Seller shall not be disclosed to others nor used for any purpose by Buyer other than in connection with transacting business with Seller pursuant to such Sales Orders, and this Contract, as applicable. Buyer shall promptly return to Seller all such Confidential Information upon Seller’s written request. Buyer’s obligations under this paragraph shall survive the cancellation, termination or completion of any order or this Agreement.
- 21. Insolvency/Changes of Ownership.** If Buyer (a) becomes insolvent, (b) undergoes a change in ownership, (c) files or has filed against it a bankruptcy proceeding, (d) has a receiver appointed over it or all or any of its assets, or (e) takes any other action that Seller determines in its sole discretion adversely impacts the conditions under which credit was extended, then Seller will have the right to terminate all orders and contracts by notifying Buyer to that effect, without prejudice to Seller’s right to payment of the price of goods that are shipped, services provided and any damages Seller might suffer.
- 22. Assignment.** Buyer may not assign any Quote, order or Agreement or any of its rights or obligations hereunder or thereunder to any third party without Seller’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.
- 23. Governing Law and Forum.** This Contract will be interpreted according to the laws of the State of Ohio. The parties expressly disclaim the applicability of the United Nations Convention on Contracts for the International Sale of Goods. Buyer 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). Buyer 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.
- 24. Severability.** In the event a provision of this Contract is determined to be invalid, illegal or unenforceable, it will not affect the validity, legality or enforceability of any other provision of the Contract and the parties agree that the remaining provisions will be deemed to be in full force and effect.

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.