

MICOR INDUSTRIES, LLC (“MICOR”)
STANDARD TERMS AND CONDITIONS
FOR ACCEPTANCE OF PURCHASE ORDERS

ENTIRE AGREEMENT: MICOR’S ACCEPTANCE OF BUYER’S PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON BUYER’S ACCEPTANCE OF MICOR’S STANDARD TERMS AND CONDITIONS FOR ACCEPTANCE OF PURCHASE ORDERS, AS CONTAINED IN THIS DOCUMENT. DIFFERENT OR ADDITIONAL TERMS IN BUYER’S PURCHASE ORDER, IN ANY CHANGE ORDER RELATED TO BUYER’S PURCHASE ORDER, OR IN ANY OTHER DOCUMENT GENERATED BY BUYER TO MICOR, ARE HEREBY REJECTED AND NO PRIOR OR SUBSEQUENT CONDUCT OF MICOR SHALL BE DEEMED TO BE AN ACCEPTANCE OF DIFFERENT OR ADDITIONAL TERMS. Buyer’s Purchase Order is accepted by Micor together with these Terms and Conditions, which shall be the entire agreement of the parties relating to the good(s) or service(s) ordered and shall supersede any other agreement whether written or oral between Buyer and Micor. No modification of the agreement shall be valid unless in writing and signed by each of the parties, however **THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT SHALL NOT BE MODIFIED UNLESS CHANGES ARE MADE IN WRITING UPON A PRINTED VERSION OF THIS DOCUMENT, WITH SUCH CHANGES INITIALED AND WITH THE DOCUMENT SIGNED BY EACH OF THE PARTIES.**

ACCEPTANCE OF COUNTER-OFFER: Micor’s acceptance of Buyer’s Purchase Order on these terms and conditions constitutes a counter-offer by Micor to Buyer. Buyer may accept Micor’s counter-offer: (1) in writing acknowledging same; (2) by written instruction for Micor to begin production after Micor’s acceptance of Buyer’s Purchase Order without objection to these terms; (3) by accepting delivery of all or part of the good(s) or service(s) specified in Buyer’s Purchase Order without objection to these terms; or (4) by paying Micor for all or part of the good(s) or service(s) specified in Buyer’s Purchase Order after delivery, but no matter the form of Buyer’s acceptance, such acceptance is expressly conditioned upon acceptance of Micor’s specific terms and conditions as contained in this document.

TRANSPORTATION AND DELIVERY PRICE CHANGES: Transportation and delivery prices are subject to change without notice. All orders are accepted subject to Micor’s price in effect at time of shipment. All charges in freight rates or transportation charges used by Micor in computing prices and charges shown on this acceptance occurring after the date of this acknowledgment will be for Buyer’s account. If Buyer should change the point at which the products are to be delivered F.O.B. the corresponding increase or decrease in freight transportation charges will be for Buyer’s account. Micor shall not be liable for any transportation charges incurred at destination such as spotting, switching, drayage, dunnage, pier unloading charges, etc.

PAYMENT: Terms of payment on all shipments are subject to approval by Micor. **ANY AMOUNTS NOT PAID BY DUE DATE AS INDICATED ON THE FACE OF MICOR’S INVOICE TO BUYER SHALL BE SUBJECT TO A FINANCE CHARGE OF 1-1/2% PER MONTH UNTIL PAID. THE RATE OF SAID FINANCE CHARGE BEING EQUIVALENT TO AN ANNUAL PERCENTAGE RATE OF 18% PER ANNUM.** In no event, however, shall the rate of the said finance charge exceed the highest rate permitted by law.

TAXES: Micor reserves the right to charge Buyer with the amount of any taxes which Micor may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption, services or transportation of any of the products sold.

MARKET PRICE CHANGES: In the event of any market changes in the cost of raw materials beyond the control of Micor during the manufacturing process, the raw material prices shall be increased to account for the additional cost and Micor shall give notice of such to Buyer. Buyer shall be responsible for payment to Micor of such additional raw material prices.

DELIVERY: Manufacture, shipment and delivery shall be subject to any prohibition or regulation imposed by the Federal or any state or local government or any subdivision or agency thereof. Micor shall not be liable for any delay or failure to perform in whole or in part, directly or indirectly resulting from or contributed to by acts of God, war, riot, embargoes, acts of civil or military authorities, national or state emergencies, insurrection, fires, floods, strikes, work stoppage, accidents, casualties, inability to procure supplies and raw materials, delays in transportation, shortage of cars, or other causes beyond Micor’s control.

INSPECTION BY BUYER: Where mill inspection is made by Buyer, Buyer’s inspector(s) shall be deemed the agent(s) of Buyer to accept products on Buyer’s behalf with authority to waive specified tests or details of test procedure, and to accept products which may deviate from formal specifications.

PERMISSIBLE VARIATIONS: Unless otherwise agreed upon in writing, all material shall be furnished to Micor subject to standard manufacturing variations and practices, and within limits and sizes Micor produces. Materials purchased are subject to customary quantity variations recognized by trade practice.

CANCELLATIONS: The Contract resulting from this acknowledgment and acceptance of Buyer’s order cannot be cancelled, terminated or modified by Buyer in whole or in part nor shall releases be held up by Buyer after raw material is in process, except with Micor’s consent in writing and then only upon terms and conditions to be agreed upon which shall include protection of Micor against all direct and consequential losses.

LOSS OR DAMAGE IN TRANSIT: In case of loss or damage in transit or failure to receive shipment within a reasonable time, the consignee must immediately notify in writing the carrier's agent at destination and Micor. This action is necessary in order to preserve the right to recover damage from the carrier and to substantiate any formal claim when presented. Title and risk of loss pass to Buyer upon delivery of products to Buyer or to carrier at shipping point. Micor shall not be liable for any damage, loss or expense resulting from anything occurring during, or attributable to transportation.

CLAIMS/WARRANTIES: Micor will not allow any allowances, deductions or return of products except by written permission of Micor. Micor shall not be liable to, nor indemnify, Buyer or any third parties for any claims, losses, labor, expenses or damages, direct or consequential, resulting directly or indirectly from the performance of this order or the use of, or in ability to use the products sold hereunder, including, without limitation, loss of profits because of increase operating costs, loss of production or shutdown of operation or otherwise and liabilities, claims and damages because of personal injury, death or property damage, claims of liquidated, exemplary or punitive damages, and including any attempted charge-backs to Micor, even if Micor has been specifically advised of the possibility of any such damages. Notwithstanding the foregoing, Micor's sole and only responsibility to Buyer for products proving defective in material and/or workmanship will be to repair or replace such defective products or, at Micor's option, credit will be allowed for the original price thereof, provided written claim in respect of such products is made by Buyer with reasonable promptness after delivery thereof and use of such products is promptly discontinued by Buyer after discovery of such defective condition. Under no circumstances shall Micor warrant any product for a period exceeding one (1) year from delivery to Buyer. **THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF MICOR.** No warranty of any kind is provided upon customer's goods, parts or items provided to Micor for machining or other processes.

REMEDIES: (a) Micor shall have all remedies allowed by law, including seller's remedies under the Uniform Commercial Code. Buyer's sole remedy shall be limited to the repair or replacement of defective products or, at Micor's option, credit for the original price as set forth above, however, in the event Buyer shall provide any raw materials for processing by Micor under this Purchase Order, Micor's liability shall be limited only to the charges to Buyer for labor by Micor under the Purchase Order and **SHALL NOT** include the cost of the raw materials supplied by Buyer, nor shall it require Micor to replace or reimburse Buyer for any such raw materials supplied by Buyer; (b) In case Buyer shall fail to make payments in accordance with the terms as set forth in this acknowledgment, Micor, in addition to its rights and remedies under the law may at its option defer further shipments on this and any other open orders until such payments are made, or may terminate this order and any other open orders, and Buyer shall not have any cause of action or be entitled to any off-set, counter-claim or recoupment against Micor by reason of any such action. (c) If the Buyer shall fail to make payments in accordance with the terms as set forth in this acknowledgment, Micor shall be entitled to reimbursement for all collection and related legal costs from the buyer in order to secure the payments due. (d) No failure of Micor to insist upon strict compliance by Buyer with the terms and conditions of this acknowledgment or to exercise any right accruing from any default of Buyer shall impair Micor's rights in case Buyer's default continues or in case of any subsequent default by Buyer.

WAIVER: Waiver by either Micor or Buyer of a breach by the other of any provisions herein shall not be deemed a waiver of future compliance therewith; any such provisions shall remain in full force and effect.

GOVERNING LAW: The Purchase Order shall be governed by the laws of the State of Alabama, without regard to such state's principles of conflicts of laws. Jurisdiction and Venue for any cause of action between the parties shall lie exclusively in the Circuit Court of Morgan County, Alabama, and neither party shall have a right to bring or remove any action in or to any Federal Court. In the event any action between the parties is brought or removed to Federal Court, this exclusive venue clause shall be contractually controlling, and upon motion to transfer or remand by Micor, the Federal Court shall transfer or remand the action to the Circuit Court of Morgan County, Alabama despite any objection or opposition by Buyer to such transfer or remand. Reference to specific remedies of Micor herein does not exclude other available remedies of Micor. Buyer agrees and consents to the exclusive jurisdiction and venue of the Circuit Court of Morgan County, Alabama in connection with any action between the parties and waives any objection based upon forum non conveniens.

INDEMNIFICATION FOR INFRINGEMENT: If the goods to be manufactured are per the Buyer's specifications and/or plans, Buyer shall indemnify, defend and hold Micor harmless from any third party claim of infringement or non-compliance of any nature with any applicable laws or regulations regarding the goods manufactured.

COMPLIANCE WITH EXECUTIVE ORDER: Unless otherwise exempt by rules, regulations, or orders of the Department of Labor, Office of Federal Contract Compliance Programs, and other Federal Government Agencies, Executive Order 11246, Section 503 of the Rehabilitation Act of 1974, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974 and other regulations (contained in 41 Code of Federal Regulations and relating to equal employment) are hereby made a part of the terms and conditions of this order as to both Micor and Buyer.

FAIR LABOR STANDARDS: Micor hereby certifies that the goods hereunder will be produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended and of regulations and orders of the United States Department of Labor issued under section 14 thereof.

RELATIONSHIP OF PARTIES: The relationship herein is solely as buyer and seller and not to be construed as creating any agency, joint venture or employment relationship.

ASSIGNMENT: Buyer shall not assign its right or delegate its performance, in whole or in part, under the Purchase Order without the prior written consent of Micor and any attempted assignment thereof without such written consent shall be totally void.

SEVERABILITY: If any provision of the Purchase Order is determined by a court of competent jurisdiction to be unenforceable, such provision shall be reformed and construed so as to be valid, operative, and enforceable to the maximum extent permitted by law or equity while preserving its original intent. The invalidity of all or part of the Purchase Order shall not render invalid the remainder of the Purchase Order.

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