

TOMCO FABRICATING, INC.

TERMS AND CONDITIONS OF SALE

- 1. GENERAL.** The Seller ("Seller") and the Purchaser (Buyer") named on the face hereof agree that the following terms and conditions apply to the materials, goods and/or products ("Goods") listed on the front of this agreement ("Agreement") or subsequently ordered pursuant to this Agreement.
- 2. ACCEPTANCE/SOLE TERMS.** This order is expressly conditioned upon Buyer's acceptance to foregoing terms. Buyer is hereby put on notice that no terms additional to or deviating from the foregoing terms shall become part of the order, unless and until letter acceptance of such additional or deviating terms, signed by an office of Seller has been issued to Buyer. Buyer's acceptance of any goods supplied by or on behalf of, Seller shall, without limitation constitute acceptance of Seller's foregoing terms. If Buyer retains possession of the Goods for a period of ten (10) days or longer after the receipt of their shipment or makes use of the Goods at any time after their receipt, Buyer shall be deemed to have **expressly assented** to Seller's foregoing terms without condition or qualification, and in so doing, **Buyer shall have confirmed its express intention to waive any conditions or qualifications on Buyer's acceptance of Seller's offer.**
- 3. PRICE.** All prices are F.O.B. Origin unless otherwise specifically set forth on the face side hereof. Prices stated are subject to change without notice in the event of (i) alterations in specifications, quantities, designs, or delivery schedules: (ii) increases in the cost of fuel, power, material supplied, or labor, and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation which increases the cost of producing, warehousing or selling the Goods purchased hereunder. No discount will be allowed unless specifically set forth on the face side hereof. If, in Seller's opinion, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment specified. Seller may require full or partial payment in advance. Terms of payment are those appearing on the invoice.
- 4. WARRANTY/REMEDY.** Seller warrants that the materials, Goods manufactured by it will be free from defects in material and workmanship for thirty days (30) following the date of shipment. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOT EXPRESSLY HEREIN, ARE HEREBY EXCLUDED. NO AFFIRMATION OF SELLER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS WARRANT CLAUSE SHALL CONSTITUTE A WARRANTY. GOODS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT

MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS THEREOF.

A. Seller's warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication, neglect, accident, improper installation or modification (including but not limited to use of unauthorized parts or attachments).

B. If any of the goods are found by Seller to be defective, such Goods will, at Seller's option, be replaced or repaired at Seller's cost or Seller will refund the purchase price or give Buyer a reasonable allowance thereof. The parties hereto expressly agree to Buyer's sole and exclusive remedy against the Seller shall be for the repair or replacement of the defective Goods or the refund of the purchase price or allowances thereof. Buyer hereby agrees that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to repair or replace defective Goods in the prescribed manner or refund the purchase price or give Buyer an allowance thereof.

C. Any warranty claim by Buyer with reference to the Goods sold hereunder shall be deemed waived by the Buyer unless submitted in writing to Seller within (i) 30 days following the date Buyer discovered, or by reasonable inspection should have discovered, any claimed breach of the foregoing warranty, or (ii) 30 days following the date of shipment. Any cause of action for breach of the foregoing warranty shall be brought within 30 days from the date of alleged breach was discovered or should have been discovered, whichever occurs first. Seller's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity.

5. LIMITATION OF LIABILITY. SELLER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY) FOR ITS GOODS SHALL BE LIMITED TO REPAIRING OR REPLACING (AT SELLER'S OPTION) GOODS FOUND BY SELLER TO BE NON- CONFORMING, OR AT SELLER'S OPTION, TO REFUNDING THE PURCHASE PRICE OF THE NON-CONFORMING GOODS. At Seller's request, Buyer will send at, Buyer's sole expense, any allegedly defective Goods to Seller's plant.

6. DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES. IN NO EVENT SHOULD SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HERewith. THE REMEDY UNDER THE WARRANTY PROVISION IS LIMITED TO REPAIR OR REPLACEMENT. Consequential damages for purposes hereof shall include, without limitation, loss of use, income or profit or losses sustained as the result of injury (including death) to any person or loss of or damage to

property (including without limitation, property handled or processed by the use of the goods). Buyer shall indemnify Seller against all liability, cost or expense which may be sustained by Seller on account of any such loss, damage or injury.

7. ACCEPTANCE OF GOODS, DELIVERY AND TRANSPORTATION. Upon buyer's receipt of shipment, buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim or shortages of or defects in the Good (30) days after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer. In the absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expenses and valuation.

8. TITLE AND RISK OF LOSS. Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to destination, and any claims for losses or damage shall be made by Buyer directly to Seller.

9. CREDIT TERMS. All orders and shipments shall at all times be subject to the approval of the Seller's Credit Department. The Seller reserves the right to decline to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of this contract in whole or in part.

10. PAYMENT. Unless otherwise agreed upon, Buyer will pay all invoiced amounts within thirty (30) days following the date of Seller's invoice. Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Seller's reasonable costs of collection. Seller reserves all other rights granted to a seller under the Uniform Commercial Code ("UCC") for Buyer's failure to pay for the Products or any other breach by Buyer of these Terms. In addition to all other remedies available to Seller (which Seller does not waive by the exercise of any right hereunder), Seller may suspend the delivery of any Products if Buyer fails to pay any amounts when due and the failure continues for five (5) days following Buyer's receipt of notice thereof. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller's breach, bankruptcy, or otherwise.

11. COSTS OF COLLECTION. If, at any time or times, Seller incurs legal expenses or other costs of expenses in connection with: (i) any litigation, contest, suit, dispute, proceeding or action in way relating to the Cost of Collection: (ii) any attempt by Seller to enforce any rights of Seller against Buyer or any other person which may be obligated to seller hereunder, or (iii) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the Cost of

Collection; then, in any such event, the expenses and costs (including attorney's fees) relating to any of the foregoing events or actions shall be payable by Buyer on demand to Seller and shall be considered additional obligations hereunder. Seller reserves the right to revoke any credit extended to Buyer at any time, because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient by Seller.

12. TAXES. Any sales, use or similar taxes, export charges, fees or other levies, taxes or surcharges now or hereafter imposed in connection with the production, sale, delivery, use or proceeds of the goods herein specified (except for taxes on seller's net income) shall be payable by Buyer, and if such taxes or fees are paid or are required to be paid by Seller, the amount thereof shall be added to and become part of the price payable by Buyer hereunder, unless Buyer provides Seller with a valid tax exemption certificate.

13. PACKAGING. Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer.

14. DELAYS. Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (a) strikes, fires, disasters, riots, acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor or supplier delay including, but not limited to failure by subcontractor or supplier to make timely delivery, or (f) any other cause of condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

15. TERMINATION, CANCELLATION AND CHANGES. Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to reasonable charges for expenses incurred and work executed by Seller or its suppliers. Purchase shall be obligated to accept any portion of the goods shipped or delivered by Seller pending Seller's written approval of cancellation. Orders for custom made material may not be cancelled after Seller has been in production unless Seller agrees in writing.

16. RETURNED PRODUCTS. Delivered Goods returned to Seller require prior written approval from seller before such goods will be accepted. Handling, inspection, restocking and invoicing charges will be assessed, if applicable, plus any outgoing packing and freight expenditures paid by Seller. All returns allowed must be shipped to Seller prepaid and must be in excellent resale condition. Goods processed to Purchaser's specifications are not returnable.

17. NO WAIVER. Forbearance or failure of Seller to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair Seller's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of Seller's rights in case of any subsequent default of Buyer.

18. SEVERABILITY. If any provision of this Agreement is unenforceable or invalid, this Agreement shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

19. ASSIGNMENT. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller provided, however, that Buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of Seller.

20. GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly here from shall be litigated only in the courts of the State of Michigan or United States federal courts located therein and the parties hereby consent to the jurisdiction and venue of such courts.

21. ALTERNATIVE DISPUTE RESOLUTION Any dispute or claim arising from or relating to this Agreement or performance under it shall be resolved amicably through discussions between Buyer and Seller attempting in good faith to negotiate a resolution thereof; provided, however, that either Buyer or Seller may seek injunctive relief from a court of proper jurisdiction where appropriate, in order to maintain the status quo while this procedure is being followed. If the parties fail to resolve any dispute arising under this Agreement, either party may seek arbitration as follows: (a) By written notice to the other party, submitting the dispute to binding arbitration, in accordance with the then-current Expedited Commercial Arbitration Rules under the American Arbitration Association ("AAA"), each party to bear equally the costs of the arbitration provided, however, that the other party may agree or refuse to participate in such arbitration. (b) If the parties are not successful in resolving the dispute through self-help or one of the parties refuses to participate in arbitration, the dispute shall be resolved by litigation. Any claim submitted to arbitration must be governed by the Expedited Commercial Rules of the AAA: except that (i)

Provision 20 must govern applicable law and construction, (ii) the locale of any arbitration will be in Detroit, Michigan or agreed to by the parties in writing, (iii) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAA, (iv) the language of the arbitration must be in English, (v) any arbitration award must state the arbitrator's material findings of fact and conclusions of law, (vi), a party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel, (vii) a prevailing party in litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, in arbitration, or in litigation to confirm or enforce an arbitration award will be entitled to recover is reasonable attorney's fees and costs. Any suite to require arbitration under this agreement, or to enforce judgment upon an arbitration award, may be brought in the state and federal courts of the State of Michigan.

22. ENTIRE CONTRACT. Upon Seller's acceptance of buyer's order, the terms and provision set forth herein shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, sample or other terms shall modify or effect terms hereof.