

# SUMIDEN WIRE PRODUCTS CORPORATION

## TERMS AND CONDITIONS OF SALE

All sales by SUMIDEN WIRE PRODUCTS CORPORATION ("Seller") are made subject to the following terms and conditions. Terms additional to or different from those in these conditions of sale, including but not limited to, terms contained in Buyer's purchase order, hereby rejected unless otherwise accepted by Seller in writing.

Seller's acceptance of Buyer's purchase order or commencement of performance shall not constitute acceptance of any of Buyer's terms and conditions. Buyer's assent to these conditions of sale shall be conclusively presumed from Buyer's (1) receipt of Seller's order acknowledgment without written objection sent to Seller within ten (10) days after receipt of such order acknowledgment or accepted purchase order, (2) instructing Seller to begin work or to ship any of the goods after receipt of Seller's order acknowledgment or accepted purchase order, or (3) acceptance of all or any part of the goods ordered. Seller may commence performance in reliance upon Buyer's acceptance of these conditions of sale. Buyer and Seller agree that the terms and conditions printed herein are accepted in good faith by both parties as the controlling and final terms and condition. Buyer and Seller further agree that there shall not be a "BATTLE OF FORMS" as described in Section 2-207 of the Uniform Commercial Code.

### **1. ENTIRE AGREEMENT.**

Except as otherwise agreed to by Seller in writing, the terms and conditions set forth herein, together with the applicable Seller's order acknowledgment or accepted purchase order, shall constitute the complete and final agreement between Seller and Buyer, superseding completely any prior oral or written communications. Terms or conditions contained in any document issued by Buyer which in any manner purport to alter, modify, change, suspend, or add to any term or condition contained herein shall be deemed excluded from such Buyer document and waived by Buyer. Seller and Buyer expressly agree that Seller may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer.

### **2. PURCHASE PRICE.**

The purchase price of the goods shall be as stated on the applicable Seller order acknowledgment or accepted purchase order. Seller shall be bound only upon issuance of an order acknowledgment or shipment and acceptance of all or any part of the goods ordered.

### **3. PURCHASE ORDER MODIFICATION/CANCELLATION.**

Buyer cannot modify, cancel, or otherwise alter purchase orders after receipt of purchase order by Seller without Seller's written consent. Any such modification, cancellation, or alteration shall be subject to conditions as negotiated at such time, which shall include protection of Seller against loss.

### **4. LIMITED WARRANTY; EXCLUSIVE REMEDY.**

EXCEPT AS EXPRESSLY SET FORTH IN SELLER'S ORDER ACKNOWLEDGEMENT, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED. At Seller's discretion, Buyer's sole and exclusive remedy with respect to the conformance of any goods furnished by Seller under this sale shall be limited to either: (1) the obligation to repair or replace, at Seller's discretion, only those portions of goods proven to have failed to meet in material respect the specifications on the Seller's facility, or (2) repayment of or credit against the purchase price of such goods. In the event Seller has authorized Buyer to scrap all or any portion of the goods, the scrap allowance is to be credited to the Seller.

### **5. LIMITATIONS OF LIABILITY.**

SELLER'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER WARRANTY, IN NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS, AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, DEMURRAGE CHARGES, COSTS OF SHIPMENT, DOWNTIME, LOST PROFITS, OR LOST SALES. SELLER AND BUYER EXPRESSLY AGREE TO THIS ALLOCATION OF RISK AND THE PRICE STATED FOR THE GOODS IS CONSIDERATION IN LIMITING SELLER'S LIABILITY.

### **6. LIMITATION OF LIABILITY FOR DELIVERY DELAYS.**

Delivery dates are approximate. In no event shall Seller be liable for any claims for labor or for any special, indirect, incidental, or consequential damages including, but not limited to, demurrage charges, cost of shipment, downtime, lost profits, lost sales, or any other damages resulting from delay in delivery. Acceptance of goods by Buyer shall constitute a waiver by Buyer of any claim for damages on account of delivery delay.

### **7. TRANSPORTATION CHARGES.**

Unless specified in Seller's order acknowledgment, price quotations do not include shipment costs. Except as otherwise agreed, delivery prices are computed by adding the cost of transportation to destination and any taxes paid by Seller. If goods are shipped freight prepaid, the charge for freight shall be added to the invoice. Buyer may elect to pick up the goods, provided that Buyer does so within ten (10) days after Buyer has been notified by Seller of the date of availability and Buyer gives 24 hours' notice prior to picking up the goods. Seller reserves the right to ship without further notification at any time after the ten (10) day period. If such method of transportation is not available as requested, Seller reserves the right to use an alternate method of transportation, whether

or not at a higher rate. In any such case, Seller shall notify Buyer of any such changes as promptly as possible.

### **8. PASSAGE OF TITLE, RISK OF LOSS.**

Unless expressly specified in Seller's order acknowledgement, all deliveries are F.O.B. Seller's facility, whether freight prepaid by Buyer or freight collect to destination, and title to the goods and risk of loss to the goods shall pass to Buyer at the point of shipment from Seller's facility, whether freight prepaid or freight collect to destination, regardless of which party arranges the freight charges or particulars of shipment. Title and risk of loss, damage or delay in transit shall be borne by Buyer. With respect to freight collect shipments, it shall be the responsibility of Buyer to select the carrier involved and for freight prepaid, freight collect or any other arrangement, it shall be the responsibility of Buyer to file and pursue any claims with the carrier related to loss, damage or delay in transit. Buyer shall not have the right to divert such shipment without permission of Seller. Unless specified in Seller's order acknowledgment or accepted purchase order, Seller reserves the right to select the mode of transportation. With respect to deliveries sold as F.O.B. Buyer's destination, title to the products and risk of loss to the products shall pass to the Buyer at the point of acceptance by signing the Seller's bill of lading or unloading from shipping vessel by Buyer or Buyer's agent.

### **9. TAXES AND DUTIES.**

Prices quoted do not include any taxes or other assessments. All taxes of any kind levied by any federal, state, municipal, foreign, or other governmental authority which Seller is required to collect or pay with respect to the production, sale, purchase, delivery, storage, processing, use, consumption, or shipment of goods sold hereunder shall be the responsibility of Buyer. Buyer agrees to pay all such taxes and further agrees to reimburse Seller for any such payments made by Seller. Buyer hereby affirms that it is purchasing the Seller's goods referenced herein for resale, and/or that Buyer is not the end user of the goods, so as to be exempt from any otherwise applicable sales tax.

### **10. PACKAGING.**

Seller shall use all reasonable means to comply with any packaging, loading, or bracing requirements specified in Buyer's purchase order. Any extras due to compliance with such requirements shall be charged according to the Seller's Extras List. If no packaging, loading, or bracing requirements are specified, Seller shall comply with Seller's standard packaging and shipping procedures customarily applied to the method of transportation used for such goods.

### **11. STANDARDS AND TOLERANCES.**

Unless specifically agreed to in writing by Seller, all goods sold hereunder shall conform to industry standard variations and tolerances such as those described by ASTM International ("ASTM") or equivalent.

### **12. CLAIMS BY BUYER.**

Claims by Buyer with respect to shortage of goods or for damaged goods must be made in writing no later than thirty (30) days of receipt of goods for visual damage to unwrapped goods or shortage of goods, and no later than one hundred twenty (120) days of receipt of goods for all other circumstances including damage to wrapped goods, non-visual defects, and all nonconformance to ordered specifications. All claims must be made only for substantial cause, must be in writing, and must specify the reason(s) for the claim. The failure to notify Seller of any claim within the time period specified by this section shall constitute a waiver of and bar such claim. Seller shall incur no liability for shortage or damaged to have occurred or existed at or prior to delivery to the carrier unless Buyer shall have entered full details thereof on carrier's delivery receipt which must be signed by the carrier's agent. Seller must be given opportunity to investigate the claim before disposes of the goods. Any damaged goods shall not be returned, repaired or discarded without Seller's written permission. No allowance will be made to Buyer for storage, materials or labor involved in the movement of rejected goods from the plant of Buyer or Buyer's processor or Buyer's storage facility. A variation between Seller and Buyer's scale weight or measured good length of up to one percent (1%) shall be permissible.

### **13. MECHANICAL PROPERTIES/CHEMICAL ANALYSIS.**

Seller makes no warranty with respect to data referring to mechanical properties or chemical analyses of tests performed on specimens of goods. Any data referring to mechanical properties or chemical analyses are the result of tests performed on specimens obtained from specific locations on the goods in accordance with proscribed sampling procedures.

### **14. FORCE MAJEURE.**

Seller shall not be responsible for cancellation or delay in delivery or performance resulting, in whole or in part, from causes beyond its reasonable control, including, but not limited to: acts of God; acts of Buyer; strikes or other labor disturbances regardless of whether or not Seller is capable of settling such strike or disturbance; mill conditions; temporary or permanent mill closures; equipment failure; inability to obtain fuel, material, or parts; war; acts of terrorism; riot; delays in transportation; repairs to equipment; epidemics; floods; fires; unusually severe weather conditions; accidents; or other contingency the non-occurrence of which was a basic assumption on which the purchase order was made.

### **15. PAYMENT TERMS.**

Unless otherwise agreed to in writing by Seller's credit division, payment terms are net cash thirty (30) days from the date of invoice payable in United States dollars or the equivalent thereof. Past due accounts are subject to a monthly service charge of 1 1/2 % on the unpaid balance, or, if less, the maximum rate permitted by applicable law. If Buyer fails to make payment in full or in part or refuses to pay any applicable price increases or surcharges, Seller shall have the right to: (i) immediately suspend

performance and cancel the unfinished portion of the order, or (ii) proceed with the order, given an extension of time for performance as is necessitated by the temporary suspension. Seller shall have right to enforce payment of the full purchase price, including any price increase or surcharge, for goods already delivered or in process. Seller shall have the right to employ an attorney to collect the due balance and Buyer agrees to pay all collection costs incurred by Seller, including Seller's attorney fees.

#### **16. OFFSETS.**

Buyer hereby authorizes Seller to credit toward the payment of any monies that may become due Seller hereunder, any monies which may now or hereafter be owed to Buyer by Seller or by affiliate or parent of Seller.

#### **17. ACCORD AND SATISFACTION.**

Checks or payments, whether full or partial, received from or for the account of Buyer, regardless of writings, legends, or notations upon such checks or payments, and regardless of other writings, statements, or documents, shall be applied by Seller against the amount owed by Buyer with full reservation of all Seller's rights and without an accord and satisfaction of Buyer's liability. Buyer hereby grants to Seller a purchase money security interest in goods and to the proceeds thereof. Buyer shall execute and deliver any financing statements and other documents that Seller may reasonably require for the protection of the security interest hereby granted to Seller by Buyer, and Buyer hereby authorizes Seller to do all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of such security interest. Buyer shall maintain adequate insurance against casualty, loss, fire, or of the goods for so long as the security interest is in effect.

#### **18. CREDIT.**

Buyer represents that Buyer is solvent and can and will pay for the goods sold to Buyer in accordance with these conditions of sale. Production, shipment, and delivery of goods shall at all times be subject to approval of Seller's credit division. Seller may, at its option, suspend performance or terminate this Agreement if, in Seller's opinion, the credit of Buyer becomes impaired, until such time as Seller has received full payment, including any general price increases or surcharges, or satisfactory security for deliveries made and is satisfied as to Buyer's credit for future deliveries. Seller reserves the right, by written notice, to cancel any order, reevaluate all payment terms, or require full or partial payment or adequate assurance of performance from Buyer without liability to Seller in the event of a material adverse change to the Buyer's financial condition.

#### **19. CONFIDENTIALITY.**

Any pricing information provided by Seller to Buyer is proprietary to Seller and shall be held in confidence by Buyer, shall only be used by Buyer in connection with this sale, and shall not be used for any other purposes or disclosed to third parties without Seller's prior written consent. Buyer shall be liable for any loss to Seller or commercial gain by others from unauthorized use of confidential information occasioned by Buyer's failure to comply with this section.

#### **20. PROPRIETARY INFORMATION.**

Seller retains ownership of all intellectual property rights, including, without limitation, patents, trademarks, trade names, trade secrets, and copyrights, and of all drawings, illustrations, dimensions, specifications, copyrights, and performance projections, designs, plans, pricelists, customer lists, computations, and descriptions prepared by Seller in connection with or relating to goods ("Proprietary Information"). Buyer shall not copy or disclose to any other persons or use for any purpose whatsoever any or all of the Proprietary Information without Seller's prior written consent. Buyer shall hold Seller harmless against any claim, and at Buyer's expense defend any suit or proceeding, brought against Seller based on an allegation that any of the designs, drawings, specification provided by Buyer to Seller, or any goods resulting therefrom, or any part thereof, or the application or use of goods for the intended purpose, constitute an infringement of any patent or copyright or misappropriation or misuse of any trade secret.

#### **21. TECHNICAL ADVICE.**

Seller assumes no obligation or liability for any technical advice furnished to Buyer, including without limitation, technical advice with respect to the use of Seller's goods and services, all such technical advice being given and accepted at Buyer's risk. Seller will not be liable for any damages of any kind arising out of or relating to the use of or the inability to use the information provided, including but not limited to any special, indirect, incidental or consequential damages including, but not limited to, downtime, lost profits or lost sales, whether foreseeable or not, and even if Seller has been advised of the possibility of damages.

#### **22. GOVERNING LAW.**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of Tennessee, including the Tennessee Uniform Commercial Code, without regard to conflict of law principles.

#### **23. MEDIATION.**

Buyer and Seller will attempt in good faith to resolve promptly through negotiation any dispute arising from or related to this sale. If a dispute should arise, representatives of Buyer and Seller shall meet at least once and will attempt in good faith to resolve the dispute. For such purpose, Buyer or Seller may request a meeting which shall be held within fifteen (15) days of the request at a mutually agreed upon time and place. The meeting shall be attended by representatives of each party with authority to resolve the dispute. If Buyer and Seller are not able to conduct a meeting within said fifteen (15) day period, or if Buyer and Seller do not resolve the dispute within thirty (30) days after their first meeting, Buyer and Seller agree to submit the dispute to mediation. Buyer and Seller further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute. Mediation involves

each side of a dispute sitting down with an impartial person, the mediator, to attempt to reach a voluntary settlement. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. Buyer and Seller agree that the entire mediation procedure will be confidential. Buyer or Seller must give written notice of their desire to commence mediation, and a mediation session must take place within forty-five (45) days after the date such notice is given. Buyer and Seller will jointly appoint a mutually acceptable mediator. If Buyer and Seller are unable to agree upon the appointment of a mediator within seven (7) days after notice of desire to mediate is given, Buyer or Seller may apply to the American Arbitration Association for appointment of a mediator. The mediation shall be held in Dickson, TN. Buyer and Seller agree that the expenses of mediation shall be borne equally by both parties.

#### **24. JURISDICTION.**

Buyer, acting for itself and its successors and assigns, hereby waives all right to trial by jury in any litigation arising from or related to this Agreement. Subject to sections 22 and 23, Buyer expressly and irrevocably consents to the jurisdiction of the state and federal courts located in Dickson, Tennessee, and waives the right to assert that any action in any such court is in the improper venue or should be transferred to a more convenient forum.

#### **25. STATUTE OF LIMITATIONS.**

Buyer and Seller agree that any action, regardless of form, arising out of this sale must be brought within one (1) year after goods are delivered to Buyer.

#### **26. NONWAIVER.**

Seller reserves the right to enforce these conditions of sale at any time and none shall be deemed waived unless such waiver is in writing and signed by an authorized officer of Seller.

#### **27. SEVERABILITY.**

If any provision or part of a provision of this Agreement is declared invalid, illegal, or unenforceable under applicable law, the affected provision will be considered omitted or modified to conform to applicable law. The validity, legality, and enforceability of all other remaining provisions or parts of provisions will remain in full force and effect.

#### **28. AUDIT.**

Unless otherwise agree to in writing by Seller, Buyer shall have no right to audit any books or records of Seller, including but not limited to, applicable purchase orders and order acknowledgements.

#### **29. INDEMNIFICATION.**

Buyer shall indemnify Seller against any loss, damage, suit, liability, or claim (including reasonable attorney fees and costs) caused by acts of Buyer not authorized by this Agreement or by any willful or negligent act of Buyer.

#### **30. ASSIGNMENT OR DELEGATION.**

BUYER SHALL NOT ASSIGN OR DELEGATE ANY OR ALL OF ITS DUTIES OR RIGHTS HEREUNDER WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER.

#### **31. MISCELLANEOUS.**

Seller and Buyer are independent parties and nothing in the terms and conditions herein, accepted purchase order or order acknowledgment shall make either party agent, partner, joint venture, or legal representative of the other.

#### **32. INCORPORATION BY REFERENCE.**

Any clause required to be included in an agreement of this type by any applicable and valid federal, state, or local law or administrative rule having the effect of law shall be deemed incorporated herein.

#### **33. INTEGRATION, MODIFICATION.**

This is the entire agreement between the parties and is intended to be the complete and final statement of the agreement between Buyer and Seller. All proposals, negotiations, and representations, if any, made prior to the date hereof, whether oral or in writing, are merged and superseded by this Agreement. This Agreement can be modified only by a writing signed by Seller and Buyer.