



Terms and Conditions of Sale

These Terms and Conditions of Sale (“Terms”) will apply to all products (“Products”) and services (“Services”) provided by Clearfield, Inc. (“Clearfield”) to the buyer (“Buyer”) as set forth in the applicable purchase order or, if different, on Clearfield’s quotation, order acknowledgement or order confirmation. Acceptance of all purchase orders is expressly made and conditioned upon Buyer’s expressed or implied acceptance of these Terms without modifications or additions. Buyer’s receipt and acceptance of, or payment for, all or any part of the Products or Services shall constitute Buyer’s agreement to these Terms. Clearfield specifically rejects, and Buyer disclaims, any pre-printed provisions in Buyer’s purchase order and any other Buyer forms or documents that differ from, conflict with or add to these Terms unless expressly agreed to in writing by an authorized officer of Clearfield specifically referencing these Terms. Clearfield’s failure to object to any term or condition in any communication from Buyer will not be construed as agreement to such term or condition, nor will it be deemed a waiver of these Terms. Clearfield reserves the right, in its sole discretion, not to accept any purchase order, including any purchase order issued in connection with a quotation provided by Clearfield. In the event Buyer and Clearfield have executed a separate definitive agreement relating to the Products and any Services, then the terms and conditions set forth in such agreement shall supersede any conflicting terms and conditions set forth in these Terms for as long as such agreement is in effect and not terminated or expired.

1. Quotations and prices. Unless otherwise agreed in writing, all prices and charges specified in Clearfield’s quotation or in any separate document are based on U.S. dollars, FOB Origin, and are effective for thirty (30) days from the date of the quotation or such other period of time as may be stated in Clearfield’s quotation. Thereafter the prices for Products and Services sold shall be Clearfield’s prices in effect as of the date Clearfield accepts Buyer’s order. Typographical and clerical errors made by Clearfield, including errors in pricing in Clearfield’s written quotation, are subject to correction by Clearfield. Transportation shall be by common carrier, at Buyer’s risk and expense. If the delivery date is postponed by Buyer, Clearfield shall have the right to adjust the price of the undelivered Products and Services to Clearfield’s price at the time of shipment. Notwithstanding the foregoing, prices in Clearfield’s quotations, order acknowledgments, order confirmations and other documents may be subject to increase to reflect increases in Clearfield’s cost of labor, raw materials, components, manufacturing, freight, packaging, labeling materials and other costs.

2. Credit and Payment Terms. Buyer shall furnish to Clearfield all financial information reasonably requested by Clearfield from time to time for the purpose of establishing or continuing Buyer’s credit limit. Clearfield shall have the right to decline to extend credit to Buyer, with or without any stated reason, and to require that the applicable invoices be paid prior to shipment. Clearfield shall have the right from time to time, without notice, to change or revoke Buyer’s credit limit on the basis of change in Buyer’s financial condition and/or payment record. Payment terms for each shipment of Products shall be net 30 days or such other terms as may be stated on Clearfield’s invoice. Buyer shall promptly notify Clearfield, in no event later than ten (10) business days after invoice date, of any alleged billing error. Such notice shall be in writing and shall be reasonably detailed in describing such error. Failure to give written detailed notice within such time shall be deemed an acceptance in full of the invoice. A service charge of the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed by law will be charged on all past due balances. Buyer is prohibited from setting off invoice amounts due which may arise from a different transaction with Clearfield.

3. Taxes. Prices do not include any sales, use, privilege, value-added, excise, occupation or similar taxes, duties, tariffs or assessments, and Buyer will pay any such amounts arising from the sale of the Products or performance of the Services. In lieu of payment, Buyer may, prior to delivery of the Products or performance of the Services, provide Clearfield with a tax exemption certificate acceptable to the appropriate taxing authority.

4. Changes, Cancellation and Returns. Orders accepted by Clearfield may not be changed, canceled or rescheduled, except with Clearfield's prior written consent and upon Buyer's payment of all costs or losses incurred by Clearfield. Products may not be returned without Clearfield's prior written consent, which Clearfield may withhold in its sole discretion. Any approved Product returns must be received by Clearfield in original packaging and new condition within 30 days of approval. Product returns are subject to a 10% - 50% restocking fee. Buyer is responsible for all costs associated with Product returns.

5. Shipping and Title/Risk of Loss. Unless otherwise agreed in writing, all Products will ship FOB Origin. Title and risk of loss or damage to the Products shall pass to Buyer upon delivery of the Products to the carrier. Clearfield reserves the right to make partial shipments and to submit invoices for partial shipment. In the absence of Buyer's specific written instructions, the carrier will be selected by Clearfield. In no event shall Clearfield be liable for any delay in delivery by the carrier, nor shall the carrier be deemed an agent of Clearfield. Clearfield will make commercially reasonable efforts to ship the Products by the estimated shipping date, but will not be liable for any damages, loss or expense arising from a delay in shipment.

6. Delivery. Delivery dates specified in any quotation, purchase order, order acknowledgement, order confirmation or in any other document or otherwise communicated to Buyer are approximate only and are based on conditions at the time Clearfield accepts Buyer's purchase order. Clearfield may, without any liability to Buyer, extend delivery dates for good cause, including shortages of labor and raw materials. In case of any delay in shipment or freight pickup of completed Products caused by Buyer, Clearfield reserves the right to place the Products in storage and Buyer will pay all applicable handling and storage charges upon receipt of Clearfield's invoice and will also pay for Products placed in storage in accordance with the terms of the original sale.

7. Excused Performance; Allocation. Neither Buyer nor Clearfield shall be liable for a failure to perform arising from any reason beyond their reasonable control, including without limitation: acts of God or public enemy; acts of war (declared or undeclared); civil unrest; acts of terrorism; changes in laws or regulations; acts or requests of any government or any political subdivision or any department or regulatory agency thereof or entity created thereby; acts of any person engaged in subversive activity or sabotage; fires, floods, explosions, or other catastrophes or natural disasters; pandemics, epidemics or quarantine restrictions; strikes, slow-downs, lock-outs, or labor stoppages or disputes of any kind; freight embargoes; unusually severe weather; shortages of raw materials; or absence of normal transportation. To the extent that, and so long as, the obligations of either party are affected by any such cause or event, such obligations shall be suspended. Clearfield reserves the right to allocate its inventory of Products in any manner it may determine from time to time, in its sole discretion.

8. Acceptance of Products. The Products provided by Clearfield are deemed accepted by the Buyer upon delivery.

9. Warranty. Clearfield warrants the Products to Buyer in accordance with the terms, conditions and limitations set forth in the Clearfield Limited Warranty in effect as of the date of shipment. Unless otherwise provided to Buyer in writing, the Clearfield Limited Warranty is located on Clearfield's website and is incorporated by reference into these Terms.

10. Indemnity. Clearfield will indemnify, defend and hold harmless Buyer from and against all claims brought against Buyer alleging the Products infringe a U.S. patent, but only on the condition that Buyer shall promptly notify Clearfield in writing of any such claim, and shall give Clearfield full authority for the conduct of the defense of such claim, and shall render to Clearfield whatever information and assistance may be reasonably required for such defense. Upon such conditions, Clearfield shall pay damages and costs, if any, awarded against Buyer, and in case the Products, or any part thereof, are held to infringe or the use of the Products or a part is enjoined, Clearfield shall have the option of: (a) obtaining for Buyer the right to continue using the Products; (b) replacing the Products with non-infringing products; (c) modifying the Products so as to avoid infringement; or (d) refunding the purchase price paid for the Products, less a reasonable amount for depreciation, in which event Buyer will discontinue using such Products. The foregoing states Clearfield's entire liability for patent infringement. Clearfield will not be responsible for any infringement to the extent such infringement arises from or is the result of: (x) Products used in combination with any other products not provided by Clearfield; (y) any alteration or modification of the Products not authorized by Clearfield; or (z) Buyer's failure to comply with Clearfield's product instructions. Buyer will indemnify, defend and hold harmless Clearfield from and against any claims brought against Buyer and Clearfield by any third party based on claims resulting from exceptions (x) through (z) above or arising or resulting from any design, requirement, specification, material or other component supplied or approved by Buyer for the design and manufacture of any Products or performance of any Services.

11. Limitation of Liability. NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, IN NO EVENT SHALL CLEARFIELD OR ANY OF ITS AFFILIATES OR SUBSIDIARIES BE LIABLE TO BUYER OR ANY OF ITS AFFILIATES OR SUBSIDIARIES FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR REVENUE, DOWN TIME, DIMINUTION IN VALUE OR OTHER ECONOMIC LOSSES), WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLEARFIELD'S CUMULATIVE LIABILITY FOR ALL CLAIMS RELATING IN ANY MANNER TO ANY PRODUCTS FURNISHED OR SERVICES PERFORMED, REGARDLESS OF THE TYPE OR NATURE OF THE ACTION, SHALL BE LIMITED TO BUYER'S DIRECT ACTUAL DAMAGES NOT EXCEEDING THE AMOUNT ACTUALLY PAID TO CLEARFIELD BY BUYER FOR THE PRODUCTS OR SERVICES WHICH ARE THE SUBJECT OF THE APPLICABLE CLAIM. CLEARFIELD HAS RELIED ON THE FOREGOING LIMITATION AND BUYER EXPRESSLY ACKNOWLEDGES THAT THIS PROVISION IS ESSENTIAL IN THE ESTABLISHMENT OF THE PRICING OF THE PRODUCTS AND SERVICES.

12. Remedies for Default. In the event Buyer fails to make timely payment of any amount invoiced, Clearfield has the right, in addition to any and all other rights and remedies available to Clearfield at law or in equity, immediately to revoke any or all credit extended, declare any and all outstanding amounts owed to Clearfield as immediately due and payable, and/or to delay future deliveries. All costs of collection, including reasonable attorneys' fees, shall be paid by Buyer. Any obligation of Clearfield to deliver Products on credit terms shall terminate without notice if: (a) Buyer

becomes insolvent or unable to meet obligations as they come due; (b) Buyer files a voluntary petition under a bankruptcy statute or makes an assignment for the benefit of creditors; (c) an involuntary petition under a bankruptcy statute is filed against Buyer; (d) a receiver or trustee is appointed to take possession of the assets of Buyer; or (e) Buyer fails, or appears to be unable, to perform any of its obligations in accordance with these Terms.

13. Specification. Clearfield may change its Product specifications and manufacturing practices at any time without notice to Buyer; provided that such changes do not materially impair the performance of the Products. Clearfield will exclusively own all materials and information provided by or on behalf of Clearfield to Buyer, including, without limitation, specifications, drawings, engineering data and technical designs.

14. All Sales Final. Unless otherwise expressly agreed in writing by Clearfield, all sales are final. No returns will be accepted by Clearfield without a written authorization to return or exchange materials signed by Clearfield.

15. No License. Neither these Terms nor the purchase of any Products hereunder shall be construed to confer upon Buyer or its customers any license under any patent or other proprietary rights of Clearfield, except the right to use such Products for the purposes for which they are sold. Buyer does not acquire any right, title or interest in any tooling, set-up, fitting-up, drawings, design information, or invention or other intellectual property resulting therefrom, which remain the sole property of Clearfield.

16. Assignment. Buyer may not assign all or any portion of its rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of Clearfield. Clearfield may assign any of its rights or obligations without Buyer's consent.

17. Governing Law. These Terms shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to the conflicts of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply to these Terms. Clearfield and Buyer irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Minnesota and of the United States of America located in Hennepin County, Minnesota for any actions, suits or proceedings arising out of or relating to these Terms and the transactions contemplated hereby, and agree to waive the defense of an inconvenient forum.

18. Waiver. No waiver of these Terms or any of its provisions is valid unless expressly agreed to in writing signed by Clearfield. No waiver by Clearfield of any default under these Terms is a waiver of any other or subsequent default. The failure of Clearfield to insist upon strict and timely performance of any term or condition of these Terms shall not be deemed a waiver of any right or remedy that Clearfield may have under these Terms or at law or equity, and shall not be deemed a waiver of any subsequent default by Buyer in performance of the terms and conditions of these Terms.

19. Controlling Provisions. These Terms shall supersede any provisions, terms, and conditions contained on any purchase order or other Buyer forms or documents, and the rights of Buyer and Clearfield shall be governed exclusively by the provisions, terms, and conditions hereof.

20. Entire Agreement; Modifications; Severability. These Terms contain the entire agreement as to the standard terms and conditions governing the sale of Products and provision of Services. These Terms may be modified or rescinded only by written agreement signed by an authorized officer of Clearfield. The provisions of these Terms are severable, and the invalidity or unenforceability of any term or provision hereof shall not operate to invalidate or render unenforceable the remaining terms and provisions which are valid and enforceable.