

TERMS OF SALE

1. **TERMS OF ACCEPTANCE:** Acceptance by Harwick Standard Distribution Corporation ("Seller") of Buyer's order is expressly conditioned upon Buyer's agreement to the terms contained herein. Buyer shall indicate agreement by any one of the following three (3) ways: (a) failing to notify Seller within five (5) days of the receipt of these terms of any objections to the terms contained herein, (b) accepting the goods delivered hereunder ("Goods") or (c) returning an initialed copy of this form to Seller. These terms constitute the final and entire agreement between Buyer and Seller, superceding any other oral or written agreements, including the provisions of Buyer's purchase order. Buyer expressly accepts all terms and conditions contained on Seller's acknowledgment and invoice, regardless of contrary expressions by Buyer. Buyer agrees that Seller may reserve the right to accept such an order without such acceptance being construed as acceptance of terms or conditions contained in Buyer's orders which are contrary to the terms and conditions provided by Seller. No change or modification of the terms and conditions stated herein shall be made without Seller's written consent, signed by an authorized representative of Seller.

2. **TERMS OF PRICING AND PAYMENT:** All prices are based on Seller's price in effect at the time of shipment. Assurance of Buyer's ability to pay may be requested and must be furnished to Seller if requested.

3. **WARRANTIES:** SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS OR THE USE OF THE GOODS OR THE PERFORMANCE OF THE GOODS AND MAKES NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY WARRANTY EXPRESS OR IMPLIED.

4. **SELLER'S LIABILITY:** IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, DIRECT OR SPECIAL DAMAGES ARISING, DIRECTLY OR INDIRECTLY, IN RESPECT OF SUCH GOODS OR THE USE OR FAILURE THEREOF, WHETHER BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY LOSS INCURRED HEREUNDER OR CONSEQUENT HERETO SHALL BE A REFUND OF THE SELLING PRICE, WHICH REFUND, AT SELLER'S SOLE DISCRETION, MAY BE EFFECTED BY A REPLACEMENT OF THE GOODS, A CREDIT WITH SELLER OR A CASH REFUND. IT IS FURTHER AGREED AND UNDERSTOOD THAT THE PRICE OF THE GOODS IDENTIFIED HERETO IS CONSIDERATION FOR LIMITING THE SELLER'S LIABILITY. NO LIABILITY SHALL RESULT FROM DELAY IN PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT BY SELLER DUE TO ANY CAUSE BEYOND SELLER'S CONTROL. IN THE EVENT OF A STOPPAGE OR DELAY RESULTING FROM ANY SUCH CAUSE, SELLER MAY FILL OTHER PARTS OF THE ORDER AS IT IS CAPABLE OF FILLING ON SCHEDULE AND IN THE EVENT THE BUYER PLACES ANY OTHER PART OF THE ORDER ELSEWHERE, SELLER SHALL BE ENTITLED TO FILL THE UNPLACED PORTION.

NO ACTION OR SUIT TO ENFORCE BUYER'S RIGHTS OR REMEDIES ARISING FROM THIS SALE SHALL BE COMMENCED LATER THAN ONE YEAR FROM THE DATE HEREOF.

5. **TECHNICAL ADVICE:** Unless otherwise specifically agreed in writing, neither Seller nor any representative of Seller is responsible for application or supervision of application of the Goods. Any supervision or technical advice or assistance, furnished other than pursuant to such written agreement is furnished gratis and Seller assumes no obligation or liability for any supervision, advice or assistance given or results obtained.

6. **CLAIMS:** Buyer shall inspect and test the Goods promptly after receipt and before use and within three (3) days following receipt shall give Seller detailed, written notice of all claims of any kind in respect to the Goods. Failure to give such notice shall constitute irrevocable acceptance of Goods. All Goods claimed as nonconforming for whatever reason shall be properly protected and held intact by Buyer until settlement is made

7. **INDEMNIFICATION:** Buyer agrees to indemnify, hold harmless and defend Seller from and against all liability and expense based upon bodily injury, property damage or economic loss, arising, directly or indirectly, in respect of such Goods or the use of failure thereof, as are caused by the negligent acts or omissions of Buyer.

8. **DELIVERY:** Shipments hereunder may be in installments, or in a single lot. All Goods sold to the Buyer shall be delivered in accordance with the shipping terms set forth on Seller's acknowledgment and invoice. All claims of Buyer for loss or damage in transit must be filed against the carrier by Buyer. Specific shipping dates when shown are deemed to be approximate. Except as otherwise stated on Seller's invoice, Buyer shall pay all freight, transportation, demurrage and insurance charges with respect to the Goods and any increases of the same shall be for Buyer's account

9. **TAXES:** Buyer shall pay the amount of all state, territorial or municipal sales, use, or similar taxes and federal levies applicable to the Goods or the sale or use thereof. All such taxes and charges are payable at the same time as the purchase price.

10. **COLLECTION:** Buyer shall make payments without expense to Seller and shall pay any reasonable attorney's fees and other costs of collection incurred by Seller. If Buyer fails with respect to this or any other agreement with Seller to pay any invoice when due or to accept any shipment as scheduled, or should Seller know or have cause to believe that Buyer is, or will be, unable to discharge Buyer's obligations. Seller may without prejudice to other remedies recall, countermand or divert any shipment to Buyer and revest title in Seller; defer further shipments, and/or terminate this Agreement.

11. **SUCCESSORS AND ASSIGNS:** This Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is not assignable or transferable by Buyer in whole or in part except upon the prior written consent of Seller.

12. **JURISDICTION:** This Agreement shall be governed and construed in accordance with the laws of the State of Ohio. Buyer's order is deemed accepted in Akron, Ohio. If any provision of this Agreement shall be held invalid, illegal, unenforceable or inoperative, the balance of the Agreement shall remain in full force and effect as if such provision had not been included. The enumeration herein of certain rights does not exclude Seller from asserting other rights which are available at law or equity.

INVOICE