

CARPENTER BROTHERS, INC. TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE shall apply to all orders placed by buyer ("**Buyer**") with Carpenter Brothers, Inc., a Wisconsin corporation ("**Company**"). Company's agreement to sell Products is expressly conditioned on Buyer's unqualified acceptance of the terms, conditions and limitations set forth in this Agreement. Unless otherwise agreed to in writing by Company, any term or condition contained in any Purchase Order or other communication of Buyer that adds to or is inconsistent with this Agreement is expressly rejected. If for any reason this Agreement or any quotation, proposal or order acknowledgement issued by Company is deemed to be an acceptance of a prior offer made by Buyer, such acceptance is expressly conditioned on Buyer's assent to only the terms and conditions contained in this Agreement.

1. **Definitions.** (a) "**Agreement**" means these terms and conditions of sale and any terms stated by Company in a written quotation or sales acknowledgement relating to the Products ordered by Buyer; and (b) "**Products**" mean all items being sold by Company to Buyer, whether equipment, parts, finished goods, materials, products to be manufactured and/or installed, services to be rendered, or any combination thereof.

2. **Orders.** Buyer's orders for Products may be submitted to Company via facsimile, email or other method acceptable to Company. Company reserves the right to reject an order for any reason, and its agreement to accept and fill an order, whether reflected in a sales acknowledgment or otherwise, is expressly conditioned on Buyer's unqualified acceptance of the terms, conditions and limitations set forth in this Agreement. Unless otherwise agreed to in writing by Company, any term or condition contained in any Purchase Order or other communication of Buyer that adds to or is inconsistent with this Agreement is expressly rejected.

3. **Price; Taxes.** All prices quoted by Company are F.O.B. Company's or its vendor's facility and are stated and payable in U.S. dollars. All prices quoted by Company will remain firm prior to acceptance for a period of 30 days from the date of the quotation. New pricing will be established upon expiration of the stipulated period of time.

Prices on Products ordered for shipment more than 30 days after the date of the Company's quotation or sales acknowledgment (whichever is later) are subject to increase based on, and limited to any increases in the prices the Company is charged for the Products, or components of the Products, by its suppliers following the date of the quotation or sales acknowledgment (whichever is later). Buyer agrees to pay any such increased prices related to increased raw material costs, and shall also pay all sales, use, VAT and excise taxes as well as all tariffs, duties and other charges imposed on or measured by the sale of Products, except for those based upon Company's income (collectively, "**Taxes**"). Taxes shall be in addition to the prices charged by Company. Applicable Tax exemption certificates must accompany any order to which the same applies.

4. **Payment.** Unless otherwise agreed to by Company, Buyer shall pay each invoice, without deduction or setoff, within thirty (30) days of the invoice date. Any "prompt payment discount" offered by Company is contingent on Buyer's complete payment of all invoices previously issued by Company. In the event Buyer is in default of any of the terms or conditions of this Agreement, including, without limitation, payment of Company's invoices in a timely manner, Company may: (a) defer or suspend further shipments of Products until Buyer reestablishes satisfactory credit; (b) cancel the unshipped or unperformed portion of any order and invoice Buyer for incurred costs and reasonable profit without any liability for Company's failure to ship or provide the Products; (c) make shipment of the Products to Buyer on a C.O.D. or cash in advance basis; or (d) pursue any other remedy available under this Agreement or at law or equity.

5. **Delivery.** Company shall ship all Products F.O.B. Company's or its vendor's facility. Title to and all risk of loss or damage to the Products shall pass to Buyer upon delivery of the Products to the carrier for shipment. Regardless of whether Buyer or Company makes the arrangements for shipment of Products, Buyer shall be responsible for all costs and expenses associated therewith, including but not limited to any increases in shipping costs originally estimated in connection with any quotation or proposal. In the event Company pays the carrier for any shipping costs or expenses as an administrative convenience to Buyer, Company shall have the right to add such shipping costs and expenses to Company's invoices. Notwithstanding anything in the Buyer's Order, the Company's

Sales Acknowledgment or any other aspects of the parties' Agreement to the contrary, any timeframe provided by Company is a good faith estimate of the expected delivery date for the Products.

6. Delays. Company will use commercially reasonable efforts to fill Buyer's orders within the time stated but in no event shall Company be liable for any damages associated with Company's inability to meet any such timeframes or deadlines, including but not limited to delays resulting from causes beyond the Company's reasonable control, or caused by fire, strike, insurrection or riot, embargoes, car or truck shortages, wrecks or delays in transportation, or the inability to obtain supplies or raw materials due to any United States Government regulations or contracts. Receipt of the Products or equipment by the Purchaser upon its delivery shall constitute a waiver of all claims for loss or damage due to delay.

7. Lack of Authority to Vary the Terms of This Proposal. No agent, representative, or dealer has any authority to obligate the Company by any terms, stipulations or conditions not herein expressed.

8. No Returns. Products and equipment subject to this Agreement cannot be returned without written authorization and instructions from the Company.

9. Bankruptcy. If either party to the contract shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall institute proceedings to be adjudicated as bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file a petition or answer or consent seeking reorganization or relief (other than as a creditor) under the Bankruptcy Act or any other federal or state law relating to bankruptcy or insolvency, or shall consent to the filing of any such petition or shall consent to appointment of a receiver, then, in any such event, the other party may terminate the contract pursuant to written notice. Such termination shall not relieve either party from any obligations incurred under the contract up to the date of receipt of said notice.

10. Claims and Returns. Claims asserting defects in Products or equipment furnished by the Company under the contract shall be made in writing to The Company within 10 days after receipt of such materials by the party to whom shipment was made. Claims not made within such time period shall be deemed waived.

Prior to returning any goods, the Buyer must receive prior authorization from the Company. The disposition of defective Product is the responsibility of the Company. The Company has no obligation to reimburse the Buyer for the scrap's worth in the event the scrap is sold.

11. Government Projects. The Company contracts with the Buyer as work for hire, not with the Government entity. Products supplied by The Company in connection with government projects will comply with the applicable published government specifications as identified in the proposal at time of contract award. It is the Buyer's responsibility to ensure that the Products supplied by The Company meet the Buyer's contractual obligations with the Government.

If the Buyer requires The Company to provide more data, or supplement information over and above government contract requirements, the consequential costs will be separately invoiced to the Buyer.

12. Force Majeure. The Company shall not be liable for delays, website downtime or any other nonperformance of the contract occasioned by causes beyond its control, including without limitation; accidents, breakdowns, lockouts, strikes, riots, sabotage, theft, vandalism, insurrection or civil disturbance, wars, weather, fires, water, interruptions or delays in or failure of sources of material, labor, transportation or supplies, acts of God, and governmental acts or regulations.

13. General. The Buyer will not assign its rights under the contract or any interest in said contract without the Company's prior written consent.

14. Specifications. Buyer acknowledges that the manufacturer or producer of the Products may make any change in the design of, or in the way it manufactures or produces, any Product if such changes are necessary or desirable to improve the safety or performance of such Product.

15. Cancellation. Unless the Products to be supplied and/or manufactured by Company involve custom ordered or designed goods or materials that cannot be used by Company in other commercial applications, the Buyer may cancel an order at any time prior to shipment upon written notice to the Company. Orders accepted by the Company for custom ordered or designed goods or materials that cannot be used by Company in other commercial applications can be cancelled only with the Company's consent, and if such consent is granted, then only upon payment of reasonable cancellation charges which shall be based on expense already incurred and commitments made by the Company plus normal profit. In the event that Buyer, for any reason, refuses to accept Products or equipment that have been shipped, the Company is entitled to recover the cost of all goods, services and materials up to the time of such refusal as liquidation charges.

16. Warranty of Title; Manufacturer's Warranty.

(a) Title. Company warrants that it has transferable title to the Products. IN THE EVENT THAT COMPANY BREACHES THE WARRANTY OF TITLE SET FORTH IN THE PRECEDING SENTENCE, COMPANY'S SOLE OBLIGATION AND BUYER'S EXCLUSIVE REMEDY SHALL BE FOR COMPANY, AT ITS OPTION, TO REPLACE SUCH PRODUCT AT NO COST TO BUYER OR TO REFUND THE PURCHASE PRICE PAID BY BUYER FOR SUCH PRODUCT.

(b) Manufacturer's Warranty Only for Defects. Buyer acknowledges that Company does not design or manufacture the Products. Therefore, Company's sole obligation and Buyer's exclusive remedy with respect to any defective, deficient or non-conforming Products (hereinafter, "Defective Products") shall be to assign to Buyer any assignable manufacturer's warranty applicable to such Defective Products. Unless stated otherwise in the manufacturer's warranty, Buyer shall be responsible for all costs and expenses associated with (i) returning the Defective Products to manufacturer for warranty service, or (ii) other disposition of the Defective Products. Buyer shall comply with all reasonable instructions or directives of the manufacturer and Company regarding the return or other disposition of Defective Products. BUYER ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY DEFECTIVE PRODUCT SHALL BE AS SET FORTH IN THE MANUFACTURER'S WARRANTY APPLICABLE TO SUCH PRODUCT, SUBJECT TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS STATED FORTH THEREIN.

(c) NO OTHER WARRANTIES. EXCEPT AS SET FORTH IN SECTION 8(a) ABOVE, COMPANY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCTS, USAGE OF THE TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE.

17. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL COMPANY OR ANY OF ITS AFFILIATES OR SUBSIDIARIES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, OWNERS OR AGENTS, BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWN-TIME, SHUT-DOWN, OR SLOW-DOWN COSTS, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, RELATED TO THE PRODUCTS AND EQUIPMENT SUPPLIED TO BUYER OR ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERETO, OR FOR ANY OTHER TYPE OF ECONOMIC LOSS OR FOR ANY CLAIMS OF BUYER'S CUSTOMERS OR ANY THIRD PARTY FOR SUCH DAMAGES. THE COMPANY SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER, EVEN IF THE SAME HAVE BEEN SPECIFICALLY ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES. COMPANY'S CUMULATIVE LIABILITY FOR ALL CLAIMS RELATING IN ANY MANNER TO THE PRODUCTS OR OTHERWISE UNDER THIS AGREEMENT, 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 COMPANY BY BUYER FOR THE PRODUCTS WHICH ARE THE SUBJECT OF THE APPLICABLE CLAIM. BUYER SHALL INDEMNIFY THE COMPANY FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND OTHER COSTS INCURRED DEFENDING ANY ACTION) THAT THE COMPANY MAY SUSTAIN OR INCUR AS A RESULT OF ANY CLAIM OF AND ITS CUSTOMERS, OR OTHER PERSONS, WHETHER

DIRECT OR INDIRECT, IN CONNECTION WITH THE USE OF THE PRODUCTS AND EQUIPMENT FURNISHED HEREUNDER. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED. COMPANY HAS RELIED ON THE FOREGOING LIMITATION AND BUYER EXPRESSLY ACKNOWLEDGES THAT THIS PROVISION IS ESSENTIAL IN THE ESTABLISHMENT OF THE PRICING OF THE PRODUCTS. THE LIMITATIONS ON, AND EXCLUSIONS FROM, LIABILITY SET FORTH HEREIN SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

18. Indemnification. Buyer shall defend, indemnify and hold Company and its affiliates and subsidiaries and their respective officers, directors, owners and agents harmless from and against any and all losses, damages, liabilities or expenses (including, without limitation, reasonable attorneys' fees and other costs and expenses of litigation) resulting from or otherwise connected with any claims based upon breach of contract, tort (including negligence, breach of implied warranty, product liability, strict liability in tort) or other theories of law, by Buyer, its officers, agents, employees, customers or its successors and assigns, or users of Buyer's products, including but not limited to claims based on the following: (a) bodily injury, death or property damage arising from the use of the Products or Equipment furnished hereunder or caused by Buyer's or its employees' or agents' acts or omissions with respect to the Products or Equipment furnished hereunder; (b) any design, specification, material or other component supplied or approved by Buyer for the design and manufacture of any Product; (c) any breach of the terms and conditions of this Agreement by Buyer or its employees and agents; or (d) Buyer's and its employees' or agents' possession, use, handling, release, storage, transport or disposal of any Products containing hazardous, toxic materials or flammable components.

19. Hazardous Materials. BUYER ACKNOWLEDGES THAT THE PRODUCTS MAY CONTAIN HAZARDOUS, TOXIC OR FLAMMABLE MATERIALS, INCLUDING, WITHOUT LIMITATION, SILICA. BUYER ACKNOWLEDGES AND AGREES THAT COMPANY SHALL NOT BE LIABLE TO BUYER FOR ANY HARMFUL EFFECTS WHICH MAY BE CAUSED BY EXPOSURE TO PRODUCTS CONTAINING HAZARDOUS, TOXIC OR FLAMMABLE MATERIALS SOLD BY COMPANY UNDER THIS AGREEMENT. Buyer shall implement precautionary measures to prevent conditions and to avoid exposure by Buyer's employees, agents or subcontractors of every tier to such hazardous or toxic Products. Buyer covenants and warrants that it shall fully comply with all applicable health and safety laws, rule, regulations, codes, ordinances, orders and Material Data Safety Sheets relating to workplace safety and the use, handling and storage of the Products. Buyer further covenants and warrants that it will adequately warn its employees, agents and subcontractors of every tier who may come into contact with the Products of the above-described health risks and required protective measures. With respect to any Product containing crystalline silica, Buyer acknowledges that crystalline silica may become airborne without a visible dust cloud. Company hereby advises and warns Buyer that breathing crystalline silica may cause lung disease, including silicosis and lung cancer. Buyer agrees to use the Products only with adequate ventilation in order to keep exposure below recommended levels. Buyer shall ensure that its employees, agents and subcontractors wear a NOSH-approved respirator or equivalent when using Products containing crystalline silica.

20. Import/Export. Buyer shall be responsible for obtaining and maintaining, at its cost, all legally required approvals, licenses, permits, registrations, certifications and other documents relating to the importation and/or exportation of the Products. Buyer shall be responsible for all cost and expenses relating to the Products transit across another country's border.

21. Compliance With Laws. Buyer shall comply with all applicable local, state, federal, international and foreign laws, statutes, codes, rules, regulations, standards and orders in the connection with its use, sale and/or distribution of the Products.

22. Assignment. Buyer may not assign or delegate any order accepted by Company, this Agreement or any of Buyer's rights, duties or obligations hereunder without Company's prior written consent.

23. Remedies. Each of the rights and remedies of Company under this Agreement is cumulative and in addition to any other or further remedies provided under this Agreement or at law or equity.

24. Attorneys' Fees. In the event Company is required to retain legal counsel or to initiate litigation to enforce or interpret the terms and conditions of this Agreement, Company shall be entitled to recover its reasonable attorneys' fees and costs of litigation from Buyer.

25. **Survival.** All of the agreements, representations, warranties, and indemnities made by Company in this Agreement shall survive the expiration or termination of this Agreement, subject only to the applicable statutes of limitation.

26. **Governing Law/Venue.** The Agreement shall be construed and governed under the laws of the State of Wisconsin, without application of conflict of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods. All actions or counterclaims regarding the enforcement or interpretation of the Agreement shall be initiated and prosecuted exclusively in the state and federal courts located in Milwaukee County, State of Wisconsin. Buyer and Company both consent to the jurisdiction and venue of such courts and expressly waive objections based on the doctrines of personal jurisdiction or forum non conveniens. COMPANY AND BUYER VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION RELATING TO THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

27. **No Waiver.** No waiver of this Agreement or any of its provisions is valid unless expressly agreed to in a writing signed by Company. The failure of Company to insist upon strict and timely performance of any term or condition of this Agreement shall not be deemed a waiver of any right or remedy that Company may have under this Agreement or at law or equity.

Date last revised: September 29, 2017