



IRONHAWK INDUSTRIAL DISTRIBUTION LLC  
TERMS AND CONDITIONS OF PURCHASE

**DEFINED TERMS.**

As used herein, "Buyer" means Ironhawk Industrial Distribution LLC", together with any subsidiaries or affiliates, and "Seller" means the party identified as seller or vendor on the face of the purchase order. "Order" means the purchase order together with the terms and conditions set forth herein.

**ACCEPTANCE OF ORDER.**

1.1 Seller agrees to be bound and to comply with all terms and conditions of the Order, including all terms and conditions set forth in the purchase order and herein, and including any amendments, supplements, specifications and other documents referred to in this Order. Acknowledgement of this Order, including without limitation, by beginning performance of the work called for by this Order, shall be deemed acceptance of this Order. The terms set forth in this Order take precedence over any alternative terms in any other document connected with this transaction unless such alternative terms are: (a) part of a written supply agreement ("Supply Agreement"), which has been negotiated between the Parties and which the Parties have expressly agreed may override these terms in the event of a conflict and/or (b) set forth on the face of the Order.

1.2 In the event these terms are part of a written Supply Agreement between the Parties, the term "Order" used herein shall mean any purchase order issued under the Supply Agreement.

1.3 This Order does not constitute an acceptance by Buyer of any offer to sell, any quotation, or any proposal. Reference in this Order to any such offer to sell, quotation or proposal shall in no way constitute a modification of any of the terms of this Order. **SELLER'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF THIS ORDER. ANY ATTEMPTED ACKNOWLEDGMENT OF THIS ORDER CONTAINING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THIS ORDER IS NOT BINDING UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING.**

**2. DELIVERY AND PASSAGE OF TITLE.**

2.1 All goods ordered shall be subject to inspection or verification by Buyer or its authorized agent (a) during the period of manufacture, (b) prior to shipment, and (c) at destination, notwithstanding any prior payment, inspection or terms of shipment. Inspection by Buyer or its authorized agent, failure of Buyer or its agent to make adequate inspection, or acceptance by Buyer shall in no event limit or discharge the obligations of Seller to comply with the provisions of this Order. **Payment for any goods hereunder shall not be deemed acceptance thereof. All risk of loss or damage to the goods will remain Seller's until delivered to and accepted by Buyer at the point specified in the Order, unless Buyer and Seller agree otherwise in writing.**

2.2 Title to the goods shall pass to Buyer no later than the time of delivery provided that any passing of title shall not prejudice either Buyer's right to reject Nonconforming Goods or any other right that Buyer may have; and in those instances where advances or progress payments are made, title, but not risk of loss or damage, shall pass to Buyer as soon as items are identified to the Order. Seller shall adequately mark and record such items as being the property of Buyer. "Nonconforming Goods" shall mean any goods that fail to conform in any respect to one or more of the warranties set forth in Section 8 or any other requirement of this Order.

2.3 Unless otherwise provided in the order or agreed by the parties in writing, each shipment shall be numbered and labeled with Buyer's Order number and delivery location, shall contain an itemized packing list, and shall be properly packaged for shipment to protect against damage. No charges of any kind including charges for inspection or for packaging, crating, freight, express or cartage will be allowed unless specified on the face of the Order. Unless otherwise provided in the Order, all pallets, containers and packing supplied by Seller shall be considered as nonreturnable and their cost shall be included in the price.

**3. PRICES AND PAYMENT.**

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3.1 Except as otherwise provided in Section 4, all prices are firm and shall not be subject to change. Seller's price includes all payroll and/or occupational taxes, any value added tax that is not recoverable by Buyer and any other taxes, fees and/or duties applicable to the goods and/or services purchased under this Order; provided, however, that any state and local sales, use, excise and/or privilege taxes, if applicable, will not be included in Seller's price but will be separately identified on Seller's invoice. If Seller is obligated by law to charge any value added and/or similar tax to Buyer, Seller shall ensure that if such value added and/or similar tax is applicable, that it is invoiced to Buyer in accordance with applicable rules so as to allow Buyer to reclaim such value-added and/or similar tax from the appropriate government authority. Neither Party is responsible for taxes on the other Party's income or the income of the other Party's personnel or subcontractors. If Buyer is required by government regulation to withhold taxes for which Seller is responsible, Buyer will deduct such withholding tax from payment to Seller and provide to Seller a valid tax receipt in Seller's name.

3.2 Invoices shall be payable within 45 days from the date a correct invoice is received and approved by Buyer, unless otherwise agreed by the parties. Unless otherwise requested by Buyer, invoices shall (a) be rendered separately for each delivery, (b) cover not more than one Order, (c) be rendered with the Order number noted thereon, and (d) be accompanied by a copy of receipt of transportation charges. If the invoice is subject to cash discount or early pay, the discount period will be calculated from either the date all goods ordered are received by Buyer or the date the invoice is received by Buyer, whichever occurs later. Buyer may withhold any amounts that are disputed in good faith. Unless specifically agreed otherwise in writing, all prices shall be fixed, firm and not subject to any form of surcharge or variation. Progress payments, if agreed to, are subject to the condition that payment will be made when items have been allocated to the Order and title has passed to Buyer, free from any third party claims.

#### **4. TIME IS OF THE ESSENCE.**

The terms and conditions for shipment are stated on the face of the Order. The time stipulated for delivery of the goods in the Order shall be of the essence, and failure of Seller to complete delivery of the goods herein ordered within the time specified, or within a reasonable time if no time is specified, shall, at the option of Buyer, without liability, in addition to Buyer's other rights or remedies, relieve Buyer of any obligation to accept and pay for any such goods. Without prejudice to Seller's obligation to deliver the goods on time, Seller shall give Buyer notice in writing immediately if any delay is foreseeable. Buyer shall not be required to make any payment in respect of goods shipped by Seller in advance of this specified shipping date until the date specified in this Order for such goods.

#### **5. INDIRECT AND CONSEQUENTIAL DAMAGES.**

Neither Party shall be liable to the other for any indirect, incidental or consequential losses or damages of any type or for loss of profit, loss of use, loss of business, or loss of financial advantage unless such loss or damage is due to the gross negligence or willful misconduct of such Party or its supplier(s).

#### **6. REJECTION.**

If any of the goods and/or services furnished pursuant to this Order are found within a reasonable time after delivery to be defective or Nonconforming Goods, then Buyer, in addition to any other rights, remedies and choices it may have by law, contract or at equity, and in addition to seeking recovery of any and all damages and costs emanating therefrom, at its option and sole discretion and at Seller's expense, may (a) require Seller to immediately re-perform any defective portion of the services and/or require Seller to immediately repair or replace Nonconforming Goods with goods that conform to all requirements of this Order, (b) take such actions as may be required to cure all defects and/or bring the goods and/or services into conformity with all requirements of this Order, in which event all related costs and expenses (including, but not limited to, material, labor, handling and freight) and other reasonable charges shall be for Seller's account, (c) withhold total or partial payment, (d) reject and return all or any portion of such goods and/or services, and/or (e) rescind this Order without liability. For any repairs or replacements, Seller, at its sole cost and expense, shall perform any tests requested by Buyer to verify conformance with this Order.

#### **7. WARRANTIES.**

Seller warrants that all goods and services provided pursuant to this Order will be free of any claims of any nature, including without limitation title claims, and will cause any lien or encumbrance asserted to be discharged, at its sole cost and expense, within thirty (30) days of its assertion (provided such liens do not arise out of Buyer's failure to pay amounts not in dispute under this Order or an act or omission of Buyer).

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Seller warrants and represents that all such goods and services will be new and of merchantable quality, not used, rebuilt or made of refurbished material unless approved in writing by Buyer, free from all defects in design, workmanship and material and will be fit for the particular purpose for which they are intended. Seller acknowledges that it is fully aware of the purposes for which Buyer or end-user intends to use the goods and therefore further represents and warrants that all goods will be suitable for, and will accomplish, such purposes. Seller expressly warrants that all goods delivered in connection with this Order will conform to any sample or any specifications, drawings or other description furnished or adopted by Buyer. Seller will assign to Buyer any manufacturers' or other warranties applicable to the goods and will cooperate with Buyer in enforcing such warranties. The warranty herein shall also apply to any replaced or corrected goods. The design, manufacture, production, testing, sale and delivery of the goods and Seller's performance of its obligations under this Order will comply with all applicable laws. Any attempt by Seller to limit, disclaim or restrict any such warranties or remedies by acknowledgment or otherwise shall be null, void and ineffective.

### **8. BUSINESS ETHICS AND CONDUCT POLICY; DOMESTIC PRODUCTION; OTHER COMPLIANCE.**

8.1 Seller agrees to provide goods and deliver services in a manner consistent with Buyer's Business Ethics and Conduct Policy. A copy of this policy will be provided to you and is available from Buyer upon request.

8.2 Absent written notification to Buyer and Buyer's written consent, Seller shall source all or virtually all of its materials for the production of the goods referenced in the Order from domestic sources and shall manufacture, assemble and produce all goods part of the Order in the United States. Upon request, Seller shall provide verification information to Buyer of the domestic content and production of all goods part of this Order. All goods sourced non-domestically shall comply with country of origin labeling laws and regulations.

8.3 Upon written request from Buyer, Seller shall provide such other information that may be requested by Buyer or end-users in connection with materials used in production and legal compliance.

### **9. PATENTS.**

Seller warrants and guarantees that the sale or use of goods or the use of any process or method utilized or provided by Seller hereunder will not infringe any U.S. or other patents, and Seller agrees to defend, release, indemnify and hold Buyer and its customers harmless from any expense (including attorneys' fees and court costs), loss, cost, damage or liability which may be incurred on account of infringement or alleged infringement of patent rights with respect to such goods, processes or methods, and Seller will defend, at its own expense, any action or claim in which such infringement is alleged. Seller further represents and warrants that any labels or trademarks affixed thereto by or on behalf of Seller are free from any valid claim for copyright or trademark infringement. Where development forms a part of this Order, the ownership of any invention, design, trade secret or copyright arising from such development shall be transferred to Buyer, and Seller shall cooperate as necessary to make such transfer effective as soon as any such right arises.

### **10. CONFIDENTIALITY AND OWNERSHIP OF DATA.**

10.1 Seller shall not use or disclose any data, designs, drawings, blueprints, or other information belonging to or supplied by or on behalf of Buyer (the "Data") except in the performance of orders for Buyer or except in the performance of this Order, make use of information or knowledge relating to details of Buyer's business, suppliers or customers, or of any other confidential or proprietary information of Buyer, suppliers or customers which shall have been obtained because of this Order. Upon Buyer's request, the Data and any copies thereof shall be returned to Buyer. Where Buyer's Data is furnished to Seller's suppliers for procurement of goods by Seller for use in the fulfillment of this Order, Seller shall insert the substance of this provision in its orders. In the event persons not specifically authorized by Buyer gain access to the Data, this Order, at the option of Buyer, may be canceled immediately. Such cancellation shall not constitute Buyer's exclusive remedy but shall be in addition to any rights or remedies hereunder and under the applicable law.

10.2 The Data shall remain the property of Buyer, and Seller shall be responsible for all loss or damage thereto while in Seller's care, custody or control. Upon completion, cancellation or termination of this Order, all such materials shall be held free of charge by Seller pending instructions by Buyer for the return, retention or destruction of the Data. Buyer accepts no obligation of confidence to Seller with

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respect to any ideas, data or information divulged by Seller, or equipment, operations or designs witnessed by Buyer at Seller's plant absent a specific written agreement to that effect.

10.3 Seller hereby specifically acknowledges Buyer's ownership of the Data and that Buyer has a superior interest in all rights, title and interest in and to the Data. Seller agrees and covenants not to contest, challenge or dispute, directly or indirectly, Buyer's ownership, title, right or interest in and to the Data, nor to contest Buyer's sole right to lease, register, use or license others to use the Data. Seller further agrees that it shall not divulge or disclose any trade secrets or confidential information of Buyer made available to Seller hereunder.

10.4 Seller shall not release, copy, extract, modify, manipulate or duplicate all or any part of the Data in any way or in any format, either for itself or for others, or suffer or permit such to be done in a manner inconsistent with Buyer's ownership of the Data without the prior express written consent of Buyer. Seller acknowledges that some or all of the Data may be protected under federal or other copyright or intellectual property laws and that significant damage and harm would result to the business of Buyer upon the unauthorized release, copying, extraction, modification, manipulation or duplication of any of the Data. Seller acknowledges and agrees that it is obligated to notify Buyer in the event any of the Data is lost or improperly removed from the custody of Seller including notifying Buyer as to the identity of any individual(s) who may be responsible for losing or improperly removing the Data. Seller agrees to use diligent efforts to recover any lost or improperly removed Data.

**10.5 The Parties hereto understand and agree that misuse (including reuse), misinterpretation of or modifications to the Data by anyone other than Buyer may result in adverse consequences that Buyer can neither predict nor control.** Seller, by acceptance of this Order, acknowledges and agrees to bind and obligate itself to release, acquit, forever discharge, hold harmless, defend and indemnify Buyer from any and all suits, claims, losses, costs, damages, expenses (including, but not limited to, all expenses of litigation, court costs and attorney's fees) or liability of whatsoever nature or kind, whether in contract or in tort or otherwise, whether arising under common law or state or federal statute, or arising out of, as a result of or in connection with any claims in any way connected with the use, misuse, modification, misinterpretation, alteration or reuse by Seller or others of the Data. Seller further acknowledges and agrees that the foregoing indemnification applies, without limitation, to any use of the Data on other sales, excepting only such use as may be authorized in writing by Buyer.

10.6 The obligations of Seller under this Section 10 shall not apply to Data which:

- (a) is public knowledge at the date of disclosure by the Buyer or lawfully available to Seller from sources other than the Buyer (whether directly or indirectly) and without restriction against disclosure by Seller;
- (b) subsequently becomes public knowledge through no act or failure to act on the part of Seller, or subsequently becomes lawfully available as described;
- (c) is already known by Seller at the date of its disclosure by Buyer; or
- (d) Seller is obliged by law to divulge by government order, valid legislation or compulsory legal process.

### 12. INDEMNIFICATION.

Seller shall defend, indemnify and hold harmless Buyer, its parent, affiliates, subsidiaries and their respective officers, directors, employees and agents (the "Indemnified Parties") from any and all suits, claims, losses, costs, damages, expenses (including, but not limited to, all expenses of litigation, and court costs and attorneys' fees) or liability (including, but not limited to, liability for property damage or loss or personal injury, including death or any loss or damage incurred by Buyer due to Seller's noncompliance with the terms and conditions of this Order), of whatsoever nature or kind arising out of, as a result of or in connection with this order or any goods supplied hereunder, **WHETHER OR NOT CAUSED BY THE NEGLIGENCE, SOLE, CONCURRENT, ACTIVE OR PASSIVE, OR STRICT LIABILITY OF BUYER, EXCEPT TO THE EXTENT ATTRIBUTABLE TO BUYER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

### 13. CLAIMS AND LIENS.

If (a) any laborers', materialmen's or mechanics' lien or other claim is filed for or on account of the goods or services (each, a "Lien"), and (b) Seller neither causes such Lien to be released and discharged, nor files a bond in lieu of such Lien, within ten days after the filing of such Lien, Buyer will have the right (but not the obligation) to pay all sums necessary to obtain the release of such Lien and, at its option, (x) deduct all amounts so paid from amounts due to Seller under this Order, or (y) require immediate cash reimbursement from Seller.





#### **14. CHANGES.**

14.1 Buyer may, at any time, by written notice to Seller, make changes to this Order, in any one or more of the following manners: (a) drawings, designs or specifications, (b) method of shipping or packing, (c) place of inspection, acceptance or point of delivery, (d) delivery schedule, (e) items, (g) quantity, or (h) scope or of goods and/or services.

14.2 Should any such change increase or decrease the cost of or the time required for the performance of this Order, an adjustment may be requested by Seller or Buyer in the price, delivery schedule or both. No claim by Seller for such adjustment shall be valid unless submitted to Buyer in writing within five (5) business days from the date of such change. Nothing contained in this Section 14 shall relieve Seller from proceeding without unreasonable delay in the performance of the Order as changed. Any change to this Order shall be made by written amendment signed by both parties.

#### **15. TERMINATION FOR INSOLVENCY.**

If a petition for bankruptcy is filed by or against Seller, Seller should make general assignment for the benefit of creditors, a receiver should be appointed in respect of Seller's insolvency, or Seller shall breach any term or condition of this Order, Buyer may by written notice to Seller terminate this Order, effective upon the date specified in such notice.

#### **16. TERMINATION FOR CONVENIENCE.**

Buyer may terminate this Order at any time by written notice to Seller. Payment for delivered goods shall be made at the price specified in this Order.

#### **17. TERMINATION FOR DEFAULT.**

17.1 Buyer, without liability, may terminate by written notice of default the whole or any part of this Order if Seller:

- (a) fails to perform within the time specified or any written extension granted by Buyer;
- (b) fails to make progress which, in Buyer's reasonable judgment, endangers performance of this Order in accordance with its terms; or
- (c) fails to comply with any of the terms of this Order.

Such termination shall become effective if Seller does not cure such failure within five (5) business days of receiving notice of default.

17.2 Upon termination pursuant to Section 17.1, Buyer may procure at Seller's expense and upon terms it deems appropriate, goods or services similar to those so terminated. Seller shall continue performance of this Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar goods or services. As an alternate remedy and in lieu of termination for default, Buyer, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, making Seller liable for any costs, expenses or damages arising from any failure of Seller's performance. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Order, Seller shall promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule, Buyer may require delivery by fastest method and charges resulting from the premium transportation must be fully prepaid by Seller. Buyer's rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Order.

#### **18. FORCE MAJEURE.**

Neither party shall be liable for any failure or delay in performance under this Order to the extent such failure or delay is caused by circumstances beyond that party's reasonable control and occurring without its fault or negligence, including, but not limited to an act of God (e.g., fire, flood, earthquake, hurricane, or other natural disaster), government restriction (e.g., the denial or cancellation of any export or other necessary license), war, insurrection, terrorist act, blockade, or embargo (collectively and individually, "Force Majeure"); provided that the party asserting Force Majeure shall provide the other party (i) prompt written notice of such event and (ii) evidence of reasonable steps taken to minimize delay or damages. Dates by which performance obligations are scheduled to be met may be extended for a period of time equal to the time lost due to any delay so caused. Notwithstanding anything herein to the contrary, Buyer may terminate the whole or any part of this Order if such a delay caused by Force Majeure continues for a period of time which Buyer determines, in its sole discretion, to be a commercially unreasonable delay.



**19. ASSIGNMENT AND SUBCONTRACTING.**

Seller may not assign this Order, in whole or in part, without the prior written consent of Buyer. Seller shall provide written notification to the Buyer of any proposed subcontracting of the work called for under this Order or part thereof which will or may exceed 25% of the total Order value Seller shall not proceed with any subcontracting in excess of such threshold amount without the prior written approval of the Buyer. Should Buyer grant consent to Seller's assignment or subcontract, such assignee or subcontractor shall be bound by the terms and conditions of this Order. Seller shall not subcontract any portion of the work called for under this Order to any party located outside of the United States or to the extent the work would be performed outside of the United States without the prior written consent of Buyer. Notwithstanding any written consent of Buyer to any assignment, any payment to an assignee shall be subject to a right of set-off of any claim which Buyer may have against Seller except to the extent that such claim is expressly waived in writing by Buyer. In addition, Seller will obtain for Buyer, unless advised to the contrary in writing, written acknowledgement by such assignee, subcontractor and/or supplier to Seller of its commitment to act in a manner consistent with Buyer's Business Ethics and Conduct Policies, and to submit to, from time to time, on-site inspections or audits by Buyer or Buyer's third party designee as requested by Buyer.

**20. NON-WAIVER.**

No waiver by either Party of any breach of any of the terms or conditions of this Order shall be construed as a waiver of any subsequent breach, whether of the same or any other term or condition of this Order.

**21. REMEDIES.**

The rights and remedies of Buyer set forth in this Order are not exclusive and are in addition to all rights and remedies of Buyer at law.

**22. GOVERNING LAW; JURISDICTION.**

This Order shall be governed by the laws of the State of Ohio, without regard to conflict of law rules. Any disputes under or in connection with this Order shall be subject to the jurisdiction of the State and Federal courts located in Cuyahoga County, Ohio, and the Parties each hereby consent to the exclusive jurisdiction of such courts and to personal service.