

OmniMax International, LLC

Purchase Order Terms and Conditions

1. Authority. Each party represents and warrants, on behalf of itself, that it has the authority to enter into and perform its obligations under this purchase order ("Purchase Order" or "Order"). "Buyer" means OmniMax International, LLC and/or any of its divisions, subsidiaries, and/or affiliates. "Seller" means the party to which this Order is addressed and also includes Seller's principal if Seller is acting as broker or agent.

2. Terms; Acceptance; Delivery. This Purchase Order becomes a contract (1) when signed acknowledgement is received by the Buyer; or (2) when Buyer gives seller written approval of the price and delivery schedule of the goods as stated by Seller if Seller's written acknowledgement of this order contains either: (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items to which Buyer's approval applies.

3. Rejection of conflicting or additional terms. Except as provided in Paragraph two (2) above, the terms and conditions (collectively "Terms") set forth herein govern the sale of the products described on the face page of the Sales Contract (the "Products") and this Sales Contract ("Contract") is expressly made conditional on the parties' assent to these Terms to the exclusion of all other terms. The Sales Contract, which includes these Terms, constitutes the sole, entire and exclusive agreement between Buyer and Seller for the sale of the Products and supersedes all prior discussions, proposals, negotiations, representations and agreements. Seller objects to and will not be bound by any additional, different or inconsistent terms in Buyer's purchase order or other documents from Buyer, and shipment or delivery pursuant to a purchase order of Buyer that contains additional, different or inconsistent terms does not constitute acceptance of such terms. No terms, conditions, understandings or agreements purporting to waive, modify, or vary these Terms will be binding unless made in accordance with section 27 below.

4. Shipment and Invoices. Each shipment of goods shall have plainly marked on all packing cases and packing lists: (1) name of Seller; (2) Purchase Order number; and (3) date of shipment. . Seller shall forward to Buyer, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made.

5. Inspection. Buyer has the right to inspect any or all of the goods within five (5) business days of receipt Buyer will provide Seller with written notice of acceptance or rejection. If Buyer fails to provide Seller with such notice, the goods will be deemed accepted "AS IS."

6. Warranty. Seller warrants to Buyer that, at the time of delivery, the goods were free from defects in manufacture so that when used for their intended purpose and properly installed, the goods, for a period ending five (5) years following the date of delivery will not perforate due to corrosion resulting from any manufacturing defect. Except as may be otherwise provided in a written Limited Warranty

Statement issued by Seller, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW, COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Buyer's sole and exclusive remedy for any breach of any limited warranty is, at Seller's option: (i) replacement of the non-conforming goods; or (ii) reimbursement of that portion of the purchase price attributable to the non-conforming goods. Buyer shall provide Seller with written notice of any latent or hidden defects within five (5) business days of Buyer's discovery of such defects. This warranty does not apply to goods (i) which have been subjected to misuse, negligence, accident, or improper maintenance, storage, installation, or application; (ii) which have been repaired or altered without Seller's prior written consent; or (iii) which, based on Seller's examination, do not disclose to Seller's satisfaction nonconformance to this warranty. Goods may not be returned without written authorization from Seller and all costs of return shall be the responsibility of Buyer.

7. Disclaimer of Damages and Limitation of Liability. To the maximum extent permitted by applicable law, Seller hereby disclaims and shall not be liable to Buyer for any special, consequential, incidental, indirect or punitive damages, including, without limitation, damages arising out of the delivery, non-delivery, sale, resale, or use of the goods, lost profits or production down-time, whether based on contract, warranty, negligence, strict liability or otherwise, as a result of this Purchase Order or any other order between the parties, even if Seller has been informed of the possibility of such damages. Seller's maximum liability shall not exceed the purchase price of the goods for which any claim is made.

8. Delivery. Unless otherwise agreed in writing, all Products shall be sold and delivered Ex Works (Incoterms 2010) Seller's factory. Title and risk of loss shall pass to Buyer simultaneously with delivery. Seller shall pack and mark the Products according to its standard procedures for domestic and/or export delivery. Should Seller be unable to meet the delivery schedule specified, Seller shall notify Buyer and shall have no liability to Buyer therefore. Buyer assumes all risk and liability for, and hereby agrees to indemnify Seller from and against, all losses, liabilities, damages and claims whatsoever (whether for personal injury, property damage or otherwise), arising out of the transportation, unloading, storage, handling or use of any Products after title passes to Buyer.

9. Payment. Following each delivery of Goods, Seller shall submit invoices to Buyer stating amounts due. The specific terms of payment are as specified on the face page of this Contract. Any claim concerning invoice amounts shall be made within ten (10) business days from the date of receipt of invoice by Buyer, or shall be deemed void. If at any time Seller becomes insecure about Buyer's ability to perform under this Contract, Seller may in writing demand from Buyer adequate assurance of Buyer's ability to perform, and Seller may, at Seller's option, suspend delivery of Goods until Seller has received such assurance from Buyer in writing, or may require cash or other security before delivery of Goods to Buyer. In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment or is in default with respect to any other Term, Seller may, at its option, cancel all further deliveries of Goods to Buyer.

Buyer agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any sum due Seller from Buyer.

10. Waiver. Either party's failure to insist on strict compliance with any provision of this Contract in any instance shall not be deemed a waiver of that party's right to insist on strict compliance in any other instance. If an action by either party requires the consent or approval of the other, such consent or approval on any one occasion shall not be deemed consent or approval on a subsequent occasion or to any other action.

11. Modification. Seller agrees to notify Buyer of relevant changes in the design or specifications of Products, or of any

decision to discontinue Products during the period covered by this Contract. Seller shall have no liability to Buyer for any costs, lost profits, or other damages resulting from any such design or specification change or Product discontinuance. If Buyer desires Product changes, Buyer shall submit a written request to Seller for consideration. Within a reasonable period thereafter, Seller shall notify Buyer of its acceptance or rejection of Buyer's request. If accepted, Seller shall provide Buyer with its charges for the Product change and a proposed implementation date.

If, however, goods are of an explosive, flammable, toxic or otherwise dangerous nature, Seller shall hold Buyer

harmless from and against any and all claims asserted against Buyer for personal injuries and/or property damages caused by the goods, or by the transportation of the goods, until completion of

unloading at Buyer's plant or warehouse.

12. Price. The price of the Products is subject to change, after notice, to the price in effect at the time of each delivery of Products. Any sales or other tax or duty which Seller may be required to collect or pay upon the sale of Products will be added to the price of the Products and will be paid by Buyer.

13. Taxes. Seller shall be responsible for all taxes assessed upon Seller's income in connection with this Purchase Order,.

14. Remedies. In the event of Seller's breach of this contract, Seller, at its option, may repair or replace nonconforming goods with conforming goods or (2) have Buyer return defective or non-conforming goods to Seller for credit or replacement at Seller's option, said return to be made at Seller's

cost and risk. In the event of Buyer's breach hereunder, Seller's remedies shall include one or more of the following: (1) recovery of the goods

or (2) the purchase price payable for goods shipped prior to such breach plus a 20% restocking fee and payment for any goods then in production which had been ordered by Buyer .

15. Cancellation. This Contract may not be cancelled by Buyer in whole or in part without Seller's written consent and payment to Seller of a sum sufficient to cover (a) the price in effect at time of delivery for all Products delivered, and the price in effect at time of cancellation for all Products ready for delivery; (b) the costs of work-in-process and raw materials incurred by Seller, its subcontractors or suppliers; and (c) the costs associated with development and engineering of the Products, including, but not limited to, tooling, facilitization, foreign exchange, and interest, to the extent such costs are properly allocable or apportionable under generally accepted accounting principles.

16. Waiver of Liens. When requested by Buyer, Seller shall provide a partial or final lien claim waiver which may be conditional upon receipt of payment by Seller.

17. Compliance with law. Each party is responsible for compliance with and for obtaining such approvals and/or permits as may be required under national, state and local laws, ordinances, regulations, and rules as may be applicable to the performance of their respective responsibilities and obligations. Buyer shall handle, store, process, use, and transfer goods in compliance with all applicable: (i) safety information provided by Seller; and (ii) laws, rules, and regulations, including, without limitation, those regarding environmental health and safety. Buyer hereby represents to Seller that it is a sophisticated consumer and possesses all requisite skill and expertise necessary to handle, store, process, use, and transfer the goods, which may contain toxic, hazardous, or otherwise dangerous substances.

18. Purchase Orders involving labor. If the Purchase Order involves the performance of labor by Seller on Buyer's premises, Seller shall indemnify and save and hold Buyer harmless from and against any and all claims and liabilities for injury or death to any person and/or damage to any property arising out of Seller's performance under the Purchase Order. Seller shall obtain and pay for Worker's Compensation and Employer's Liability Insurance, public liability and property damage insurance to insure against such injuries in amounts acceptable to Buyer. Seller shall furnish Buyer with insurers' certificates evidencing such insurance, which certificates shall provide that the coverage evidenced thereby shall not be cancelled except upon 30 days prior notice to Buyer.

19. Designs, Tools, Dies, Materials on Consignment. Any materials, equipment, tools, designs, drawings, blueprints or other properties furnished by Buyer or specifically paid for by Buyer shall be Buyer's property. Any such property shall be used only in filling orders from Buyer and may, upon Buyer's

demand, be removed by Buyer without charge. Seller shall store and maintain such property in good condition and repair at its own cost. Seller shall be responsible for all loss or damage to the same while in Seller's possession. Buyer makes no warranties of any nature with respect to any property it may furnish to Seller under this Purchase Order.

20. Confidential Information.

a. The parties each acknowledge that it may be exposed to confidential information regarding the other party's business, including, but not limited to, the name, location and requirements of customers, proprietary information, financial data, special arrangements with suppliers, source of supplies, plans, drawings, specifications, customer lists, prospect lists, employee lists, conceptions, inventories, plans, formulas, and other information concerning the other party's business ("Confidential Information"). Each party understands that such Confidential Information acquired by virtue of this Purchase Order is released to the other party only for the purpose of meeting the obligations of this Contract. Each party further agrees that from the date of this Purchase Order, and for a period of three (3) years after the latest date on the face of this Order, it shall not, either directly or by assisting others, solicit business from or attempt to solicit business from any of the other party's customers, including actively sought prospective customers. Each party further agrees not to disclose to any person or entity, or use for its own benefit, any Confidential Information obtained by virtue of this Purchase Order.

21. Default. Except as otherwise provided herein, either party may cancel and terminate this Order without cost or liability to the other party upon any of the following: (1) a party's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition for bankruptcy by or against such party; (3) institution of legal proceedings against a party by creditors or stockholders; or (4) appointment of a receiver for a party by any court of competent jurisdiction. In addition to any remedies that may be provided under this Purchase Order, Seller may terminate this Purchase Order with immediate effect upon written notice to Buyer, if Buyer fails to pay any amount when due.

22. Assignment.. Neither Buyer nor Seller may assign any of its rights or obligations under this Contract without first obtaining the written consent of the other; provided, however, that Seller has the right to assign any of its rights or obligations under this Contract to any divisions, subsidiaries or affiliates.

23. Force Majeure. Neither party shall be held responsible for any failure of performance under the Purchase Order due to federal or municipal action, statute, ordinance, or regulation; strike or other labor trouble; fire; or any other cause, act of God, contingency, or circumstances within or without the United States not subject to the control of the affected party.

24. Governing Law. This Purchase Order and the contract shall be governed by and construed under the laws of the State of North Carolina without regard to its conflicts of laws principles. Buyer and Seller

agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. Any lawsuit arising in connection with this Contract must be brought in the state or federal court sitting in Wake County, North Carolina.

25. No Third-Party Beneficiaries. This agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

26. Savings Clause. Any of the terms and conditions of this Purchase Order deemed to be unreasonable by a court of competent jurisdiction shall be enforced to the extent the court deems it to be reasonable, and the remainder of the terms and conditions shall be unaffected and enforced to the fullest extent permitted by law.

27. Complete agreement. The terms and conditions of this Purchase Order, and any attachment referenced herein, are the sole terms and conditions governing this Order. Reference to Seller's bids or proposals, if noted herein, shall not affect the provision of this Order, unless specifically so provided herein. No amendment or change will be binding on the parties unless made in writing and signed by both parties' authorized representative.

28. The Equal Opportunity and Affirmative Action Clauses of 41 CFR 60-1.4, 60-250 and 60-741 are hereby incorporated by reference. Unless exempted by law, the Contractor or Purchaser agrees to take the following actions as required or appropriate: file all required forms and documents, including Standard Form 100 (EEO-1)(60-1.7), prepare written affirmative action programs (60-140, 60-250.5, 60-741.5)

29. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Contract or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.