

# **DAYTON Lamina Corporation**

## **Terms and Conditions of Sale**

### **GENERAL CONDITIONS:**

All prices are subject to change without notice. Products or services provided ("Products") are invoiced at the price in effect at the time of order. All orders are subject to acceptance by DAYTON Lamina Corporation ("Seller"). These Terms and Conditions of Sale ("Terms") may only be modified by a signed amendment issued by Seller. THESE TERMS ARE DEEMED PART OF ALL QUOTATIONS, ACKNOWLEDGEMENTS, INVOICES, PURCHASE ORDERS AND ANY OTHER DOCUMENTS, WHETHER ELECTRONIC OR IN WRITING, RELATING TO THE SALE OF PRODUCTS BY SELLER AND SELLER OBJECTS TO ANY TERMS PROPOSED ON PURCHASER'S ("Buyer") FORMS OR EXPRESSED OR IMPLIED IN OTHER DOCUMENTATION WHICH ARE INCONSISTENT WITH, OR IN ADDITION TO THESE TERMS. THE PROVISIONS CONTAINED IN THESE TERMS SHALL CONTROL IN THE EVENT OF ANY INCONSISTENCY BETWEEN ANY OF THE PROVISIONS OF THESE TERMS AND THE PROVISIONS OF ANY OTHER DOCUMENT, INCLUDING BUT NOT LIMITED TO ANY FORMS, TERMS AND CONDITIONS OR PURCHASE ORDERS, WHETHER PRESENTED BY BUYER OR SELLER.

### **CHANGES:**

Buyer agrees not to make changes to the Products ordered including the specifications or to the delivery schedule set forth on the face hereof without the prior written consent of Seller

### **PAYMENT:**

Seller shall not be required to proceed or continue with performance of Buyer's order while Buyer is in default under this or any other contract with Seller or upon the acquisition, dissolution, liquidation, suspension of business or insolvency of Buyer or the commencement of any proceeding under any bankruptcy or debtor law by or against Buyer. If progress payments are specified herein, Seller may suspend production, shipment or delivery until all such payments then due are paid in full by Buyer. Acceptance by Buyer of each delivery shall constitute a separate contract with respect to the amount thereof. Seller may recover for each shipment as a separate transaction, without reference to any other shipment. Buyer shall have no right to set off any amounts against any amount owed to Seller. Buyer agrees that Seller will cancel and has no further liability for any credit balance which remains open after one (1) year of the issuance date.

## **TAXES:**

Buyer shall fully reimburse Seller in the event that Seller is required, either directly or indirectly, to collect or pay any excise, sale or use taxes, duties or other similar charges or increases (including any interest or penalties) relating to the manufacture, production, sale, delivery, importation, consumption or use of the Products sold which is not specifically included in Seller's quoted price.

## **TERMS:**

Terms of payment must be approved by Seller before orders will be accepted from Buyer. Payment terms are granted at the sole discretion of Seller. Seller shall have the right to change the terms of payment and/or require payment as a condition of shipment at any time, by notifying Buyer whenever this right is exercised. Seller's payment terms are as stated on the invoice, in U.S. funds. Seller, at its option, may charge Buyer 2% interest per month or the maximum legal rate, whichever is less, on any balance not paid within the stated terms. Seller may also (without liability and in addition to any other remedy) cancel any unshipped portion of Products sold hereunder and stop any Products in transit until Buyer pays all amounts payable hereunder whether or not then due. Buyer agrees to indemnify and hold Seller harmless for any and all costs and expenses incurred by Seller including collection costs, reasonable attorneys' fees and court costs, in connection with collection of invoices and/or the enforcement of any of its rights hereunder.

## **WIRE TRANSFERS:**

For payments by Wire Transfer or ACH, please contact the Seller's Credit & Collection Department for more information.

## **FORCE MAJEURE**

Seller is not liable for any alleged loss or claim made by Buyer or any third party which results in whole or in part from Seller being prevented or delayed in fulfilling any or all of its obligations under any order by reason of circumstances beyond its reasonable control including, but not limited to, acts of God, bad weather, strikes or other labor disturbances, shortages of or inability to obtain labor, materials, utilities, fuel, transportation or equipment, fire, floods, earthquakes, explosions or other casualties, wars or civil disturbances, insurrection or riots, breakage or accident to machinery or equipment, compliance with any federal, state or local law, order or regulation or any other cause beyond Seller's control (including a failure of any supplier or contractor to perform).

## **LIABILITY:**

In no event shall Seller its affiliates or supplier's be liable to Buyer, its customers or any third party for any indirect, incidental, consequential, punitive or special damages of

any kind or nature whatsoever, including but not limited to, any lost or anticipated profit or revenue, loss of production or loss of use of product, even if Seller has been notified of the likelihood thereof, arising from or in any way connected with the Products sold hereunder, whether alleged to arise from breach of contract, express or implied warranty, or in tort including without limitation, negligence, failure to warn or strict liability. In addition, in no case shall liability of Seller its affiliates or suppliers exceed the individual price of the Product upon which liability is asserted. Buyer shall indemnify, defend and hold Seller, its affiliates and employees harmless from and against any and all claims, liabilities, suits, losses, costs, expenses (including attorney's fees and expenses) or damages related to any claim, investigation, litigation or proceeding (whether or not Seller is a party) to the extent caused by any act or omission of Buyer or Buyer's customers including, but not limited to, alteration, failure to properly use and maintain any Products, or decisions to combine the Products with products not sold by Seller.

### **WARRANTY:**

Seller exclusive warranty is that all new Products of its own manufacture delivered to Buyer by Seller shall materially conform to the known written specifications of Buyer and shall be free from defects in material or workmanship under normal use and service for a period of six (6) months from date of shipment. Seller makes no warranty with respect to Products which are manufactured by others. Any Products not manufactured by Seller are sold only under such warranty as the manufacturer gives to Seller. Seller makes no guaranty as to the enforceability of such warranty but shall use reasonable efforts to assist Buyer in asserting a claim under such warranty of the manufacturer. In the event of a breach of the above warranty, Buyer's sole and exclusive remedy and Seller's sole and exclusive liability and obligation is to secure repair, replacement, or a refund of the purchase price at Seller's sole option, of any portion of the Products of its manufacture, which, upon prior inspection by Seller, shall prove, in Seller's sole discretion, to have been defective. Upon notification by Buyer, Seller will either request that the Products be returned to Seller's plant or Seller may elect to make inspection at Buyer's plant. The provisions of this warranty shall only apply where Products have been correctly handled, stored, installed and maintained and shall not apply to Products which have been subject to accident, overloading, abuse, misuse or negligence by Buyer, its agents, customers, employees, contractors or invitees, or which shall have been installed, maintained, repaired, or altered by other than Seller in any way. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE OR NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE ANY WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF SELLER'S OBLIGATIONS HEREUNDER.

## **PRECAUTIONS, PROHIBITIONS:**

IT IS THE BUYER'S SOLE RESPONSIBILITY TO ENSURE THAT ANY PRODUCT IS FIT AND SUFFICIENT FOR ITS INTENDED USE. BUYER SHALL BE SOLELY RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF THE PRODUCT WITH RESPECT TO BUYER'S APPLICATION. Buyer acknowledges that it alone has determined that the Products will meet its requirements of the intended use in all cases. Buyer agrees to use particular attention in applications including, but not limited to, outdoor use, consumer products, energy control systems, combustion systems, railroads and aviation systems, medical equipment, vehicles, safety equipment and applications subject to industry or government regulations. BUYER AGREES TO NEVER USE THE PRODUCT FOR AN APPLICATION INVOLVING SERIOUS RISK TO LIFE OR PROPERTY WITHOUT ENSURING THAT THE SYSTEM AS A WHOLE HAS BEEN DESIGNED TO ADDRESS THE RISKS AND THAT THE PRODUCT IS PROPERLY RATED AND INSTALLED FOR THE INTENDED USE WITHIN THE OVERALL EQUIPMENT OR SYSTEM.

## **TRANSPORTATION:**

All shipping dates are estimates and are based on the date the Products are shipped from the manufacturing facilities or distribution centers. All shipments are made F.O.B. shipping point at which point title and risk of loss for the shipped Products shall pass from Seller to Buyer (whether or not Seller pays any part of the freight) or, if Seller stores the Products for the account of Buyer at Seller's facility, then title and risk of loss shall pass to Buyer at the time of storage of the Products at Seller's facility. Seller shall retain a security interest in the Products until the full purchase price is paid to Seller. If Buyer requires a means of transportation other than that selected by Seller, any extra cost incurred by reason of using such other means shall be paid by Buyer. Seller will package Products as it deems proper for protection against normal handling and extra charges will apply for special conditions.

## **INSPECTION:**

Buyer shall inspect the Products and either accept or reject within 10 business days after delivery of the Products at Buyer's facility. If the Products do not conform to these Terms or the agreed specifications, Buyer shall notify Seller of such condition, and allow Seller a reasonable opportunity to inspect the Products. No Products shall be returned by Buyer without Seller's prior written consent.

## **INFRINGEMENT:**

If a claim is alleged or an action is brought or threatened for infringement of any trade secret, patent, trademark, tradename, copyright, or any related action, arising out of or related to the manufacture or sale of the Products in accordance, in whole or in part, with the designs or specifications of Buyer, Buyer shall indemnify Seller against any and all damages, liabilities, losses, and expenses, including reasonable attorneys' fees, incurred

by Seller related to or in connection with such claim or action and shall defend such action at Buyer's expense if requested by Seller. Seller shall have no liability for any intellectual infringement or similar claims, expenses or liabilities of any type in connection with use and/or application of any Product (i) in combination with any device, component, application or data not supplied by Seller; (ii) alteration of the Products by Buyer or a third party; or (iii) use of the Product in any manner other than for which it was designed.

### **SELLERS PROPERTY:**

Notwithstanding any charges to Buyer for engineering or tooling, all engineering, tooling, jigs, fixtures, dies, tools, patterns or other special equipment shall remain the exclusive property of Seller. All designs, drawings, specifications or other technical information disclosed by Seller to Buyer and any modifications or improvements thereof shall (i) be the property of Seller and shall be treated as confidential by Buyer and shall not be disclosed to others without the prior written approval of Seller, (ii) be used by Buyer only in connection with its use of the Products sold by Seller, (iii) not be used by Buyer for the production of the Products by Buyer or any third party without the prior written consent of Seller and (iv) be delivered to Seller at its written request upon completion or termination of this order provided, however, that this confidentiality obligation shall not apply to information which is made available to the general public.

### **ENTIRE AGREEMENT:**

No statement of agreement, oral or written, made prior to or at the delivery of these Terms, shall vary or modify these Terms. Failure of Seller to exercise any option, right or privilege under these Terms shall not constitute a waiver of any such right, privilege or option or the performance thereof. If any provision hereof is rendered ineffective or invalid, such provision shall not invalidate any other provision.

### **APPLICABLE LAW:**

These Terms and the respective rights and obligations of the parties herein shall be governed by and construed according to the laws of and the parties will be subject to the exclusive jurisdiction of the courts of the state the Products are shipped from.