

GENERAL TERMS AND CONDITIONS

1) Acceptance of Order.

(a) All orders received by Seller are subject to final acceptance by Seller and no terms or orders are binding upon Seller until so accepted in a signed writing by Seller (“**Seller’s Acceptance of Order**”). After Seller has confirmed it will sell the goods or any services (hereinafter collectively referred to as “goods”) to Purchaser pursuant to the Seller’s Acceptance of Order, a contract between Seller and Purchaser (hereinafter referred to as this “**contract**” or this “**Agreement**”) will be deemed to be automatically formed and will be solely controlled by the following documents only: (a) these Terms and Conditions; (b) Seller’s Quotation document; (iii) Seller’s Quotation Supplement document; (iii) Seller’s approved form of Acceptance of Order, including without limitation the Seller’s Order Acknowledgment document; (c) Seller’s approved form of invoice(s); (d) Seller’s approved form of purchase order; (e) Seller’s approved form of Application for Credit application, if one has been signed; and (f) Seller’s approved form of Mutual Confidentiality/Business Agreement, if one has been signed (hereinafter collectively referred to as the “**Governing Documents**”).

(b) The parties hereby agree that the above described Governing Documents solely control and govern the purchase and sale of all of the goods, sets forth the entire agreement of the parties with regard to the purchase and sale of all such goods, supersede any prior discussions between the parties, and supersede and takes precedence over any additional, different, contrary or inconsistent terms presented by Purchaser at any time and in any format, including without limitation any purchase order from Purchaser, any of Purchaser’s standard terms and conditions, or any other document which Purchaser might present to Seller at any time (collectively, the “**Purchaser’s Proposed Documents**”). For purposes of clarity, except and only to the extent as otherwise expressly agreed by Seller in a written agreement that has been signed by an authorized officer of Seller, any additional, different, contrary or inconsistent terms proposed by Purchaser, including without limitation any of the above described Purchaser’s Proposed Documents, are hereby deemed to be material alterations to the Seller’s offer, are hereby rejected by Seller in their entirety, and shall not apply at any time to this contract or to the purchase and sale of any of the goods.

2) **Price.** The price for all goods shall be as set forth in the Seller’s current published prices. Published prices are subject to change upon reasonable notice to Purchaser (which notice may be giving by Seller posting its updated published prices in its normal course of business). All prices are Incoterms 2010 Ex-Works Seller’s plant and do not include transportation costs or charges relating to transportation costs or charges relating to transportation. All such costs and charges shall be solely the responsibility of Purchaser. Prices quoted include standard packing according to Seller’s specifications. Special packing requested by Purchaser, including packing for exports shall be paid by Purchaser as an additional charge.

3) **Taxes.** All Federal, State, or Local taxes or taxes of any foreign authority (including without limitation sales, use, and excise taxes) which Seller is required to pay or collect, shall be paid by Purchaser. Additional charges which Seller may charge the Purchaser include, without limitation, delivery, storage, processing, use, or transportation charges, fees or costs. These taxes and additional amounts described above may be added to the price (as set forth in Section 2), or billed as a separate item, as the law may require or as the Seller may determine. On shipments to Buyer outside the United States, Buyer shall pay directly any customs, duties, and related charges or assessments by any government entity. Unless a State issued tax exempt certificate is presented at the time an order is placed, all sales taxes will be assessed when Seller ships the goods to the following states: AL, AK, AZ, CA, CO, FL, GA, IL, IN, KY, MA, MD, MI, MO, NC, NJ, NY, OH, PA, SC, SD, TN, TX. UT, VA, WA, and WI. At the Seller’s request, the Purchase will determine whether the goods are subject to any State sales tax and will provide the Seller with the amount and percentage of that sales tax.

4) **Credit Terms and Terms of Payment.** Credit accounts will be opened only with firms or individuals approved by Seller. Purchaser shall have thirty (30) days from date of the invoice in which to make full payment unless agreed otherwise in writing by the Buyer and Seller. Buyer shall pay the Seller interest at the rate of one and one-half percent (1.5%) per month or the highest lawful rate of interest permissible under applicable law, whichever is less, on all past due accounts. All payments by Buyer to Seller hereunder shall be in U.S. Dollars (\$US). The Seller reserves the right at

any time to suspend credit, to change credit terms provided herein, to suspend performance, to decline to ship, or to stop any goods in transit when, in its sole opinion, the financial condition of the Buyer so warrants. In any such case, in addition to any other remedies provided by law, Seller may terminate any contract between Buyer and Seller. Failure to pay any invoice when due makes all prior and subsequent invoices immediately due and payable, irrespective of terms, and the Seller may withhold all subsequent deliveries and terminate any services until the full account is settled. Buyer shall reimburse Seller for the costs of collection, including, without limitation, reasonable attorney's fees, of any overdue amount owed by Buyer to Seller, and such collection costs shall also be subject to carrying charges. Acceptance by the Seller of less than full payment shall not be a waiver of any of its rights. Collection costs shall also be subject to carrying charges in the amount of 1.5% monthly.

- 5) **Risk of Loss, and Title Passing.** Title and risk of loss of all goods shall pass to the Purchaser when the goods are delivered to the common carrier for shipment, including without limitation delivery to Federal Express, UPS or similar overnight delivery services. The terms of delivery of all goods shall be Ex Works, Seller's plant (EXW Incoterms 2010). Except as set forth in Section 6, the Purchaser is solely responsible for the cost of transporting goods to its desired destination. Purchaser acknowledges and agrees that the carrier is not Seller's agent, even if the transporting the goods has been arranged or supervised by the Seller.
 - 6) **Shipment.** All shipments shall be Incoterms 2010 ExWorks Seller's plant and the date of shipment shall be contingent upon the date of the Seller's Acceptance of Order (as defined above). Delivery dates given in advanced of actual shipment of goods are estimates and shall not be deemed to represent guaranteed delivery dates. In addition to the limitations on title and risk of loss as set forth in Section 5 herein, Seller's obligation with respect to shipment of the goods shall not extend beyond: a) putting the goods in the possession of a carrier and making a contract for the transportation thereof, b) obtaining and delivering such documents as may be necessary for Purchaser to obtain possession of goods and of notifying the Purchaser of the shipment. Seller shall have the right to ship all or portions of the goods at one time. This contract shall be deemed separable as to the goods sold. Seller shall not be liable for any loss due to delay in shipment, and in the event of any delay due to a Force Majeure event, the date of delivery or time for completion will be extended by the length of time lost due to such delay. Seller, in the exercise of its discretion, has the right to deliver early.
 - 7) **Inspection and Acceptance of Goods.** Purchaser shall have the right to inspect the goods within ten (10) days after the carrier's delivery of the goods to the Purchaser's destination location (the "**Inspection Period**"). Purchaser's failure to inspect the goods or Purchaser's failure to notify the Seller in writing that the goods are materially nonconforming compared to the Seller's published specifications by the expiration of the Inspection Period shall automatically constitute: (i) a waiver of Purchaser's rights for breach of warranty and a waiver of Purchaser's right of inspection and rejection for nonconforming; and (ii) the irrevocable acceptance of the goods by Purchaser.
- 7.1 Waiver Policy Update: A new waiver policy has been issued by Toyo Tanso USA (TTU). This policy will allow TTU to better track/record waiver notices sent and responses from our customers. The following steps will be taken by your salesperson to improve efficiencies on the waiver decision making process. These steps designed to avoid finished parts being held in TTU QA/Inspection for extended time periods awaiting a final decision.
- a. Your salesperson will email TTU's standard waiver document in Microsoft Excel format. In the email is a request to your organization for: (a) decision within 10 business days and a notification TTU will place the PO is on hold until the waiver is resolved.
 - b. If there is no reply after 1 months' time from first waiver notification being emailed delivered, then the salesperson will attempt to contact you by phone.
 - c. If there is still no reply after 2 months' time from first waiver delivery, then the salesperson will issue a final notice by email and phone call. This notice will indicate TTU's intention to scrap the waived product and cancel the PO; without issuing a remake if no decision is made.
 - d. If there is still no reply after 4 months' time from the first waiver delivery notice, then TTU will send a notice that the product has been scrapped and the PO is canceled. The part will not be remake without a new PO being issued and the previous waiver details reviewed in a discussion between TTU engineering and your engineering team.

- e. If the part being waived requires engineering discussion within your organization please work in a timely manner to get all engineering details resolved. If the part being waived cannot be made within specifications and tolerances; TTU reserves the right to have an engineering discussion to find a solution for the product(s).

8) Force Majeure; Excusable Delays. Seller shall not be liable for delays or failure to perform due, directly or indirectly, to causes beyond Seller's control, including without limitation the inability of Seller's suppliers to deliver goods, services, or raw materials necessary for Seller's to perform an Order, acts (including failure to act) of any governmental authority, war (declared or undeclared), strikes or other labor disputes, fires, explosions, acts of God, and natural calamities (such as floods, earthquakes, storms and epidemics).

9) Limited Warranty. Subject to the Purchaser being in compliance with this Agreement, and provided the Purchaser has only used the goods in accordance with the published specifications and has not otherwise used the goods in violation of Section 17, the Seller warrants (the "**Warranty**") that, for a period of forty-five (45) days after the first delivery of the goods to the Buyer (the "Warranty Period"), the sold goods shall substantially conform to Seller's published specifications during that Warranty Period. In the event the Buyer discovers an alleged defect in the goods which Buyer believes will give rise to a claim under the Warranty, the Buyer must report any such alleged defect in writing to Seller within the above described forty-five (45) day Warranty period of Buyer's discovery of the same (the "**Warranty Claims**") otherwise the Warranty covering that alleged defect shall expire. The Warranty Claim must provide a commercially reasonable summary of the alleged defects in the goods. The Buyer must first obtain the written instructions of the Seller before the Purchaser has the right to return any allegedly defective goods to the Seller. Upon Seller's receipt of a Warranty Claim, the Seller has the right to inspect the alleged Warranty Claim to verify the alleged defects in the goods and the Purchaser will reasonably cooperate with the Seller for this purpose. In addition, upon Seller's receipt of a Warranty Claim, and at the Seller's sole option, the Seller has the right to either repair (using commercially reasonable efforts) or replace the nonconforming goods (the "**Remedy**"). The Remedy is Seller's sole obligation, and Buyer's exclusive recourse, for all Warranty Claims, including without limitation all claims of defects with respect to any goods. If the Remedy is adjudicated insufficient however, Seller has the option, at its election, to refund the purchase price paid by Purchaser and Seller shall have no further liability to Buyer relating to the subject goods. Buyer shall pay costs of returning goods under a Warranty Claim, and Seller shall pay the costs of sending goods to Buyer after Remedy is performed.

EXCEPT FOR THE EXPLICIT WARRANTY SET FORTH ABOVE IN THIS SECTION 9,, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL GOODS AND SERVICES PROVIDED BY SELLER ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. EXCEPT FOR THE EXPLICIT WARRANTY SET FORTH ABOVE IN THIS SECTION 9, SELLER HEREBY DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO ANY OF ITS GOODS OR SERVICES OR ANY OTHER PERFORMANCE OR DELIVERY UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR OTHER WARRANTIES: (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, VALIDITY, WORKMANLIKE EFFORT, QUALITY, ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, TITLE, QUIET ENJOYMENT, NO ENCUMBRANCES, OR NO LIENS; (B) OF CONFORMANCE TO ANY SPECIFICATIONS, DEMONSTRATION OR PROMISE BY OR OF SELLER; OR (C) ARISING THROUGH COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

10) Limitation of Liability. SELLER SHALL IN NO EVENT BE LIABLE FOR CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS SALE INCLUDING, BUT NOT LIMITED TO, CLAIMS BASED UPON LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF THE OTHER EQUIPMENT, ENVIRONMENTAL DAMAGES, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED EXPENSES OR OPERATION, OR REPROCUREMENT COSTS, OR CLAIMS RELATING TO SERVICE INTERRUPTION, WHETHER OR NOT THE CLAIMED LOSS OR DAMAGE IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, EVEN IF THE PARTIES HAVE BEEN ADVISED OF SUCH POSSIBILITIES.

IN THE EVENT THE SELLER HAS ANY LIABILITY UNDER THIS AGREEMENT, PURCHASER HEREBY AGREES THAT THE SELLER'S MAXIMUM LIABILITY UNDER OR IN ANY WAY RELATING THE SALE OF ANY GOODS OR SERVICES OR OTHERWISE ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE PRICE PAID FOR THE GOODS UPON WHICH THE CLAIMS ARE BASED. ALL SUCH LIABILITY SHALL TERMINATE ONE YEAR FROM DELIVERY, IF NOT SOONER TERMINATED.

- 11) Assignment.** This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, no right or interest in this contract shall be assigned by Purchaser, and no delegation of any obligation owed by Purchaser shall be made without the written permission of Seller. Any purported assignment or delegation by the Purchaser in violation of this Section 11 shall be void. The Seller has the right to assign this contract to any party.
- 12) Cancellation and Changes.** Purchaser may not cancel or change any order once placed with and accepted by Seller except with the prior written consent of Seller and upon terms that will indemnify Seller against any loss.
- 13) Alteration, Interpretations and Definitions.** This contract is intended by the parties as a final expression of their Agreement and as complete and exclusive statement of the terms of their Agreement. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract. Waiver by Seller of a breach by Purchaser of any provision of this contract shall not be deemed a waiver of future compliance therewith, and such provision shall remain in full force and effect. Without in any way limiting the provisions of Section 1(b) herein, and for purposes of further clarity, the Purchaser further acknowledges and agrees that these Terms and Conditions and the other Governing Documents (as defined in Section 1(b) herein) take precedence over any additional, different, contrary or inconsistent terms contained in any prior correspondence between the parties or contained at any time in any of the Purchaser's Proposed Documents (as such term is defined in Section 1(b) herein), except and only to the extent as otherwise expressly agreed by Seller in a written agreement that has been signed by an authorized officer of Seller and only if its otherwise complies with Section 1(b) herein.
- 14) Limitations.** Any action by Purchaser under this contract or relating to any goods sold by Seller must be commenced within one (1) year after the date of the applicable Seller's Acceptance of Order (as defined above).
- 15) Governing Law; Disputes.** This contract shall be interpreted and enforced in accordance with the laws of the State of Oregon, without regard to conflict of law principles. The exclusive jurisdiction for any action to interpret or enforce any contract between the Purchaser and the Seller shall be the State in which Seller's manufacturing plant is located. Any such action shall be decided by a judge sitting without a jury, and Purchaser hereby waives its right to a jury trial. In the event of any suit, action or arbitration to interpret or enforce this contract, the prevailing party shall be entitled to its attorney fees, costs, and out-of-pocket expenses, at trial and on appeal.
- 16) Special Note.** Nearly all of the Seller's goods are subject to US Export Control laws, controlled through the Bureau of Industry and Security. Purchaser's right to export or re-export such goods from the United States is limited by such export controls. Purchaser hereby covenants, represents and warrants that the Purchase shall not export any of the Seller's goods except in Compliance with US Export Control Laws.
- 17) Selection and Application: Indemnity.** Buyer is solely responsible for proper selection and application of goods sold by Seller, and Buyer agrees that it will use and apply such goods only for such uses as may be described by Seller and according to specifications and limitations established by Seller from time to time. Buyer shall indemnify and hold Seller harmless from and against any and all damages, claims, or expenses (including reasonable attorney's fees and costs, both at trial and in any appeal) arising out of or relating to improper selection, application, or abuse of the goods sold by Seller, or use or application of Seller's goods other than according to specifications and limitations established by Seller from time to time.
- 18) Additional Provisions.**

18.1 **Modification and Waiver.** This Agreement shall not be modified except by a written agreement dated subsequent to the date of this contract and signed by both parties. None of the provisions of this contract shall be deemed to have been waived by any act or acquiescence on the part of a party but only by an instrument in writing signed by an authorized agent of such party. No waiver of any provision of this contract shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

18.2 **Enforceability.** If any part or parts of this Agreement is found void or unenforceable, the remainder of this Agreement shall be enforceable to the fullest extent allowed by law.

18.3 **United Nations Convention on Contracts.** The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.

18.4 **Attorney Fees.** If any suit or action is filed by any party to enforce this contract or otherwise with respect to the subject matter of this contract, the prevailing party shall be entitled to recover reasonable attorney fees and costs incurred in preparation