



Terms and Conditions of Sale

The terms and conditions of sale set forth in this document (these "Terms") are intended to establish standard terms and conditions of sale for all sales by Superior Fabrication Company, LLC ("Seller") to the purchaser ("Buyer") unless otherwise provided in a written agreement between Buyer and Seller. All such sales are made expressly conditional upon these terms and conditions. This document, together with the quotations, order acknowledgments, invoices, specifications, and all supplements and attachments thereto issued by Seller from time to time, will constitute the entire agreement between Buyer and Seller for each such sale. In the event of any inconsistency between these Terms and the provisions contained on the quotation, order acknowledgment, invoice, specification, or any supplements or attachments thereto issued by Seller from time to time, the provisions contained on the quotation, order acknowledgment, invoice, specification, or any supplements or attachments thereto issued by Seller from time to time will control over these Terms. Any conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof, including, without limitation, the acceptance of the materials, equipment, supplies, and/or services sold hereunder (the "Products"), payment therefore, or resale of the Product, will constitute acceptance by Buyer of all of these Terms. Additional or different terms provided in Buyer's purchase order or any other documents provided by Buyer to Seller are hereby expressly objected to and rejected. These Terms may be modified from time to time by Seller, by notice to Buyer. Each such modification will be binding upon Buyer with respect to all purchases occurring after the date of such modification. Except as otherwise described herein, no modification or termination hereof or waiver of any of the obligations hereunder by Buyer will be effective unless in writing and signed by Seller.

1. All prices are payable in U.S. Dollars unless otherwise stated in Seller's quotation. Pricing does not include any taxes, duties, fees, etc. that may be applicable. Buyer will pay and be responsible for all taxes (excluding federal, state or local income or franchise taxes of Seller) and all import duties, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon, whether payable by Seller or Buyer, imposed or levied on or with respect to the sale of the Products, the amounts payable hereunder, or the possession, sale, use, furnishing or ownership of the Products, and all broker and similar fees, shipping and handling fees, and other assessments incurred by Seller. If Buyer will fail to pay and discharge such taxes, duties and other sums when due, Seller may, at its option, pay the same, in which event Buyer will promptly reimburse Seller for such sums paid. The price hereunder will be increased by the increased amount Seller is liable to pay in respect of any value added tax chargeable on the supply to Seller of materials to be incorporated in the Products or on services which are required for the performance of Seller's obligations under these Terms.
2. Unless otherwise specified, domestic orders will be priced and shipped F.O.B. Seller's warehouse (which will be Kincheloe, Michigan unless otherwise stated in the quotation), and international orders will be priced and shipped Ex Works Seller's warehouse. All shipping terms will have meaning set forth in the Uniform Commercial Code for domestic sales or in INCOTERMS™ 2010, as published by the International Chamber of Commerce, for international sales. All shipments are freight collect unless requested otherwise. Special packaging is available at an additional cost.
3. Unless otherwise specified, Seller will have the right to make partial shipments. Each partial shipment will be deemed a separate sale, and payment will become due therefore in accordance with the terms of payment contained in the invoice. Partial shipments will be billed as shipped.
4. Each quotation is effective for orders placed within fifteen (15) calendar days after the date of the applicable quotation. Pricing and/or delivery are subject to change after said fifteen (15) days.
5. To order the quoted Product, Buyer should reference the quotation number in its purchase order and send a copy of the purchase order to:

Email: sales@supfab.com
Fax: 906-495-5712

Mail: Superior Fabrication Company, LLC
17499 S. Dolan Street
Kincheloe, MI 49788

6. Terms of sale are payment net thirty (30) days upon credit approval. Credit information should be included with Buyer's order. Sales will be invoiced on the date of shipment. No discount will be given for timely payment. If payment hereunder is not made on time, Seller, in addition to all other legal, equitable and contract rights available to it, will be entitled to interest on such overdue payment at the rate of one and one-

half percent (1.5%) per month. Notwithstanding the foregoing, interest will not be charged on any overdue payment at a rate in excess of the maximum rate permitted by law. In addition, all collection charges including reasonable attorneys' fees incurred to collect said payment will be payable by Buyer.

7. Notwithstanding any shipping term set forth herein, title to any Products sold and risk of loss of such Products passes to Buyer upon delivery by Seller to the carrier, and Products will be deemed "delivered" at such time.
8. Seller will acknowledge orders and provide an expected shipment date within three (3) business days of receipt of Buyer's purchase order. The date of delivery stated in the order acceptance or confirmation is an estimated date.
9. Order cancellations must be approved by Seller in writing and are subject to cancellation charges for Seller's accrued manufacturing and procurement expenses. Cancellations submitted after Seller's initial order acknowledgment should be submitted to Seller as a purchase order change. A cancellation will be acknowledged by Seller within three (3) business days and will include the applicable cancellation charges to be paid by Buyer.
10. Order changes will be accommodated on a case-by-case basis as determined by Seller in its sole discretion. Changes should be submitted by Buyer as a purchase order change. Changes may require additional charges to Buyer dependent upon the Product's production status and changes in the proposed delivery schedule. If a requested change is acceptable to Seller, Seller will acknowledge Buyer's requested change within three (3) business days of receipt of Buyer's purchase order change and will provide notice of any changes to the price and/or time of delivery affected thereby.
11. (a) Except as expressly provided herein and as limited by this Section 11 and Sections 12 and 20 hereof, Seller warrants that the Products will be free from any defects in design, material, or workmanship for a period of twelve (12) months (maximum 2000 hours use in a year) from the date of installation of the Product to the user or to the expiration of the eighteenth (18th) month from the date of shipment, whichever is less. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT MAY ARISE FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE. Oral or written statements by Seller's employees or agents, including via email, do not constitute warranties, will not be relied upon by Buyer, and are not part of this agreement of sale. Buyer hereby acknowledges that it has not entered into this agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein or made in writing and executed by a duly appointed officer of Seller.
(b) The foregoing warranty is exclusive of and Seller assumes no liability for Products which are improperly transported, damaged or prematurely worn out due to improper application (improper use of Product by mounting attachments, field work which the Product is not designed to do, or extended load center beyond the capacity rating of the Product), improper installation of replacement parts, use of other than Seller-provided parts, or inadequate service.
(c) No warranty repairs are to be accomplished without Seller's prior approval. Buyer will notify Seller of any warranty issue within ninety (90) days of its discovery. Notification will be written and will include mast serial number, date of warranty registration, repair date, hours of operation, description of the problem and the application in which the Product was used.
(d) All warrantable and allegedly-defective Products will be returned to Seller to aid in review and analysis of warranty claims. Seller will pay freight costs on all items deemed as warrantable. Seller may, at its discretion, choose not to require return of defective material and/or Product. A return authorization number will be required in all cases. In the event that a timely and bona fide claim under these Terms is made with respect to a defective or damaged Product, Seller's sole responsibility will be, at Seller's option, to furnish the missing or replace the defective or damaged Product or to give Buyer an allowance therefore. Buyer's obligation to accept and make payment on time for the balance of the Product delivered or to be delivered under the order will not be affected thereby. In the event that Seller determines the alleged defect not to be a warrantable issue, Seller will respond in writing explaining the finding.
(e) In case of a dispute as to whether a Product conforms to the warranty set forth in Section 11(a), Seller and Buyer may designate a mutually acceptable independent testing company and/or surveyor to make an examination and in such case said testing company's and/or surveyor's findings will be conclusive and binding

on both parties (the expense of which examination will be borne by Seller with respect to each item found not to conform to specification and by Buyer with respect to each item found to conform to specifications).

(f) Buyer may decide that a field campaign is necessary to repair or replace Products. Buyer agrees to consult with Seller before a field campaign is started, in order that mutual agreement on cost and support that may be required can be agreed upon.

(g) Seller agrees to make discontinued parts available to Buyer for a period of ten (10) years from the date of discontinuance unless Seller is producing a substitute item that can reasonably replace the discontinued version. In addition, Seller agrees to support all replacement parts for a period of ten (10) years from the expiration date of warranty.

12. BUYER'S REMEDIES WITH RESPECT TO ANY PRODUCT FURNISHED BY SELLER HEREUNDER THAT IS FOUND NOT TO BE IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT BECAUSE OF BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, WILL BE LIMITED EXCLUSIVELY TO THE RIGHT OF REPAIR OR REPLACEMENT OF SUCH DEFECTIVE PRODUCT, OR REFUND OF THE SALE PRICE OF THE PRODUCT, AT THE SOLE DISCRETION OF SELLER. NO ALLOWANCE WILL BE MADE FOR ANY LABOR, CHARGES OF BUYER FOR REPLACEMENT OF PARTS, ADJUSTMENTS OR REPAIRS, SHIPPING, IN-OUT COST OR ANY OTHER COST OR EXPENSE, UNLESS SUCH CHARGES ARE AUTHORIZED IN WRITING IN ADVANCE BY SELLER. BUYER'S OBLIGATION TO MAKE PAYMENT ON TIME FOR THE BALANCE OF PRODUCTS DELIVERED UNDER THIS AGREEMENT IS NOT AFFECTED BY ANY CLAIM OF BUYER HEREUNDER. SELLER'S CUMULATIVE MAXIMUM LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, OR OTHERWISE, IS LIMITED TO THE PURCHASE PRICE OF THE PARTICULAR PRODUCT SOLD HEREUNDER. IN NO EVENT WILL SELLER BE LIABLE FOR CLAIMS (BASED UPON BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED WARRANTY, NEGLIGENCE, OR OTHERWISE) FOR ANY OTHER DAMAGES, WHETHER DIRECT, IMMEDIATE, FORESEEABLE, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL, OR FOR ANY EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING, OR USE OF THE PRODUCTS SOLD HEREUNDER, INCLUDING WITHOUT LIMITATION ANY DAMAGES RESULTING FROM COST OF SUBSTITUTE PROCUREMENT, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION, SAVINGS, GOODWILL AND/OR REVENUES, LOSS OF BUSINESS, FAILURE OR DELAY IN PERFORMANCE, TRANSPORTATION, HANDLING OR INSTALLATION, OR FABRICATION CHARGES OR EXPENSES, EVEN IF SELLER HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.
13. Seller will not be responsible for any liability due to any delay in the performance of any order accepted by it due to unforeseen circumstances or to causes beyond its reasonable control, including, without limitation, acts of God, strikes, war, riots, acts of terrorism, fires, floods, accidents, differences with workers, lockouts, or other industrial disturbances, freight embargoes, lock-out of suppliers necessary to the execution of the order, loss or unavailability of usual sources of transportation, fuel, labor, supply, raw materials, or power priorities, failure, breakdown or shortage of components necessary to the completion of the order, equipment breakdown, embargoes, subcontractor caused delays, the compliance with any law, rule, regulation or order, whether valid or invalid, of any government body or any instrumentality thereof, or acts of civil or military authorities, whether now existing or hereafter created. Performance of an order will be deemed suspended so long as any such circumstances or causes delay its execution and Buyer will extend any letter of credit issued in payment for the Product, if applicable, through any such delay. Whenever such circumstances or causes have been remedied, Buyer will accept performance under said order.
14. In the event that Buyer fails to perform all or any part of its obligations hereunder, Seller, at its option and in addition to any and all other remedies, whether at law or in equity, which Seller may have, may cancel the order and recover from Buyer its damages, including, but not limited to, its expenses, mill cancellation fees and the differences between the purchase price and the lesser of: (a) Seller's cost; or (b) the market price at point of delivery to Buyer, or Seller may dispose of the Product, whether shipped, manufactured or otherwise identified to this order, publicly or privately, in bulk units, for Buyer's account and apply the net proceeds after deducting expenses or disposition, against the purchase price. In case of any deficiency, Buyer will remain liable therefore; Seller's expenses in either case will include reasonable attorneys' fees and other cost of enforcing its rights.
15. Buyer hereby represents that it is solvent and Buyer's signing of any delivery receipt (however denominated) furnished by Buyer to the delivering carrier will constitute a further representation of solvency at the time of

signing such receipt. Should Buyer fail to make payment when due under any contract between Buyer and Seller, Seller will have the right to withhold shipment of any portion of the Products covered by the order or by any other existing contract between Seller and Buyer. Said action on the part of Seller will not release Buyer from its obligation to accept and pay for such remaining portion of Product if and when shipped by Seller or otherwise release Buyer of any of its obligations under these Terms or any such other contract. If at any time there is a change in the financial condition or structure of Buyer, arising from a change in business or market conditions or otherwise, or arising from a merger, reorganization or other change in business form or if Buyer becomes insolvent, makes an assignment for the benefit of its creditors or ceases to be a going concern, or if a petition in bankruptcy with respect to Buyer is filed, or if any lien arising from judicial process or otherwise is placed upon or any receiver or trustee is appointed with respect to any material asset of Buyer, then Seller, in addition to any and all other rights and remedies, will have the right to cancel this order without liability on its part or to change the credit terms of these Terms, including, but not limited to, requiring the payment of cash in advance of delivery. In the event Seller will have reasonable grounds to doubt, at any time, Buyer's financial responsibility to perform hereunder, Seller will demand, in writing, adequate assurances of performance from Buyer and may, until such assurances are received from Buyer, suspend its performance under these Terms. Upon receipt of a justified demand, as provided hereunder, Buyer's failure to provide adequate assurances of performance, acceptable to Seller, within thirty (30) calendar days of the receipt of such notice, will be considered a repudiation of these Terms (and the order) and will entitle Seller to terminate these Terms (and the order) immediately.

16. Buyer will indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders, members, managers and employees (collectively, the "Seller Indemnified Parties") from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, penalties, costs and expenses (including, without limitation, costs of defense or investigation, reasonable attorneys' fees and court costs) (collectively, "Losses") to the extent arising from, related to or in connection with: (a) the negligence or misconduct of Buyer, its agents, employees, representatives or contractors; (b) Buyer's breach of any of its obligations under these Terms (and the order); (c) use of a Product in combination with other products, equipment or software not supplied by Seller; (d) infringement of any United States patent by any Product supplied by Seller hereunder and made in accordance with the design and/or specification furnished by Buyer to Seller; (e) use of a Product in an application or environment for which it was not designed; (f) modifications of a Product by anyone other than Seller without Seller's prior written approval; or (g) the transportation, storage, sale, or service of the Products by Buyer, or other acts of Buyer giving rise to third party claims against Seller.
17. In the event of a patent infringement suit brought against Buyer, its successors or assigns arising out of a patent infringement by Seller relating to the Products and if, as a result of such suit, a judgment is made final in a court of last resort against Buyer, its successors or assigns, Seller agrees to pay that portion of the judgment Losses only to the extent of the purchase price which will have been paid by Buyer, its successors and assigns to Seller for the infringing Products delivered by Seller during the last six (6) months prior to the commencement of said suit. The foregoing is conditional upon prompt notification to Seller of the commencement of such suit and Seller's having the opportunity to participate in the defense thereof on behalf of Buyer. THE FOREGOING STATES THE ENTIRE OBLIGATION AND THE EXCLUSIVE REMEDY OF BUYER WITH RESPECT TO ANY ALLEGED PATENT, COPYRIGHT, MASK WORK, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT BY ANY PRODUCT OR PART FURNISHED HEREIN AND THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT. Seller will not be liable for any Losses and Buyer will indemnify, defend with competent and experienced counsel and hold harmless the Seller Indemnified Parties from any Losses resulting from any suit or proceeding based upon a claim arising from: (a) compliance with Buyer's designs, specifications or instructions; (b) modification of the Product by a party other than Seller after delivery by Seller; (c) the use of any Product or any part thereof furnished herein in combination with any other product, or (d) the direct or contributory infringement of any process patent using any Product furnished herein.
18. Seller owns all the trademarks and copyrights related to the Products. Under no circumstances will Buyer use any of Seller's intellectual property, without the prior written consent of Seller and a license from Seller thereof. Sale of any Product or any part thereof by Seller does not confer upon Buyer any license under any patent rights or copyrights.

19. Seller reserves and Buyer grants to Seller a purchase money security interest in all Products sold and all cash receivables or cash from resale thereof to secure the full payment and performance by Buyer of its liabilities and obligations to Seller. Buyer acknowledges that this Section 19 may be filed with the appropriate authorities as a financing statement and Buyer agrees to execute and deliver such documents as Seller may request in order to perfect its security interest.
20. No claim or cause of action, other than a claim for payment of the Product price, arising under these Terms (including, the order) may be asserted more than one (1) year after the date on which such claim or cause of action arises.
21. These Terms and the sale of Products hereunder will be governed by and construed in accordance with the substantive law of the State of Ohio, without giving effect to its conflict of law provisions. The parties hereby expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here. Buyer agrees that any legal suit, action, or proceeding involving Seller will be brought and resolved exclusively by the State and Federal courts located in Summit County, Ohio, and the courts to which an appeal therefrom may be taken; provided that any party will have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order. Buyer hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue.
22. In the event that any provision hereof will be illegal, invalid or unenforceable, it will not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision will be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.
23. Seller's obligations are subject to the export administration and control laws and regulations of the United States. Buyer shall comply fully with such laws and regulations in the export, resale or disposition of Products. Buyer agrees and shall cause each of its customers to agree, that it shall commit no acts which directly or indirectly violate any United States export control law, regulation, treaty or other international agreement to which the United States adheres or complies or any applicable export, import or other laws of any other jurisdiction and agrees to indemnify and to hold Seller harmless from any and all Losses incurred by Seller or its affiliates for any reason arising from or connected with any such violation, incurred intentionally or unintentionally. Quotations or proposals made, and any orders accepted by Seller from a Buyer outside the United States are with the understanding that the ultimate destination of the Products is the country indicated therein. Diversion of the Products to any other destination contrary to United States law is prohibited. Accordingly, if the foregoing understanding is incorrect, or if Buyer intends to divert the Products to any other destination, Buyer shall immediately inform Seller of the correct ultimate destination.
24. The failure by Seller to enforce at any time any of the provisions herein, will not constitute a waiver and will in no way be construed as a waiver of such provisions or options, nor in any way be construed to affect the validity of these Terms or any part thereof, or the right of Seller thereafter to enforce each and every such provision.
25. These Terms will be binding upon inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding, Buyer may not assign any rights or claims, or delegate any duties hereunder, in whole or in part, without the prior written consent of Seller, which may be withheld at Seller's sole discretion.
26. These Terms will remain in effect unless expressly terminated in writing by Seller and Buyer. The rights and obligations of the parties under these Terms which by their nature would continue beyond the termination, cancellation or expiration of the agreement or order including, without limitation, warranty, indemnifications, intellectual property rights, will survive such termination, cancellation or expiration and will thereafter bind the parties and their successors and assigns.
27. Buyer represents and warrants: (a) that it has read and understood these Terms; (b) that these Terms are fair and reasonable to Buyer; (c) that the party or individual placing this order on behalf of Buyer has the full power, authority and capacity to do so, and to perform the obligations contained hereunder in accordance with its terms; and (d) no representations have been made or relied upon except as specifically stated in these Terms.