

Mills Products, Incorporated

PURCHASING TERMS AND CONDITIONS

These Terms and Conditions of Sale govern the purchase of goods or products by Mills Products, Inc. ("**Buyer**") from any seller of such goods or products ("**Seller**").

1. APPLICABILITY. Any purchase order delivered to Seller by Buyer is an offer by Buyer for the purchase of the goods or products specified on the face of the purchase order and related services, if any (collectively, the "**Goods**"), from the Seller in accordance with and subject to these Purchasing Terms and Conditions (the "**Terms**"; together with the purchase order and terms and conditions on the face of the purchase order, the "**Order**"). Each Order, together with any documents incorporated therein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order. These Terms apply to any repaired or replacement Goods provided by Seller hereunder. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.

2. ACCEPTANCE OF ORDER. Seller shall provide written acceptance of each Order received by Seller from Buyer immediately upon receipt of such purchase order. If for any reason Seller should fail to accept an Order in writing, any conduct by Seller which reasonably indicates to Buyer that Seller has accepted or will proceed to perform its obligations under the Order shall constitute acceptance by Seller of the Order. If the applicable Order has been issued by Buyer in response to an offer, and if any terms herein are additional to or different from any terms or conditions of such offer, then the issuance of this Order by Buyer shall constitute an acceptance of such offer subject to the express condition that the Seller assent to such additional and different terms contained herein and acknowledge that this Order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer unless Seller notifies Buyer to the contrary in writing within five (5) days of receipt of the applicable Order.

3. PRICES; TAXES.

a. The prices of the Products shall be set forth in a writing signed by the Buyer, which may be part of the applicable Order (the "**Prices**"). If the Prices are not included in the Order, the Prices shall be as set forth in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and all other costs or charges. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

b. Seller's prices shall be exclusive of all federal, state or local taxes levied upon, or measured by, the sale of Products to the Purchaser, the sales price, or use of goods required in the performance of this Order. Seller shall list separately on its invoice any such tax lawfully applicable to any such goods, and payable by Buyer, with respect to which Buyer does not furnish to Seller lawful evidence of exemption.

4. TERMS OF PAYMENT.

a. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Order. Buyer shall pay all properly invoiced amounts due to Seller within 60 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder shall be in US dollars and made by ACH. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than 30 days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 4. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.

b. Buyer shall have no obligation to honor invoices for Products or any related services at any price not reflected in the applicable Order unless such increase shall have been confirmed in writing by the Buyer to Seller no less than 120 days prior to the increase. No charge of any kind not stated on the Order will be allowed unless specifically agreed to in advance by Buyer in writing, but damage to any good because of packaging, marking or shipping which fails to protect such goods will be charged to Seller. All payments are made conditional upon acceptance by Buyer of the Products and any related services required under the Order and shall be subject to adjustment for failure of Seller to meet the requirements of the Order.

5. DELIVERY.

a. The Seller shall deliver the Products in the quantities, according to the specifications, and on the date(s) specified on the applicable purchase order ("**Delivery Date**"). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. If no quantities are set forth in the applicable Order, Seller shall immediately notify Buyer in writing and request that Buyer provide a quantity. If no Delivery Date is specified in the Order, Seller shall deliver the Goods within 30 days of Seller's receipt of the Order. Shipments in greater or lesser quantity than ordered may be returned at the Seller's expense. If Seller fails to meet the applicable Delivery Dates, Buyer may, without limiting Buyer's other rights or remedies, either direct expedited routing and charge excess cost incurred thereby to Seller, or cancel all or part of the applicable Order in accordance with these Terms.

b. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate all or any portion of the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Goods which are delivered prior to the Delivery Date are delivered at the risk of Seller and may, at Buyer's option, be returned at Seller's expense for proper delivery and/or have payment therefore withheld by Buyer until the applicable Delivery Date except as otherwise agreed by the parties.

c. Seller will comply with Buyer's billing and routing instructions, and Seller shall pay any redelivery or rerouting expense incurred by Buyer as a result of improperly marked or improperly routed goods.

d. All Goods shall be delivered to the address specified in this Order (the "**Delivery Location**") during Buyer's normal business hours or as otherwise instructed in writing by Buyer.

6. PACKING, MARKING & SHIPPING:

a. All shipments shall be properly packed, marked and shipped in accordance with the requirements of the common carrier transporting the same and of this purchase order and in a manner which will permit securing of lowest transportation rates. Seller shall reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking or routing.

b. Seller shall properly mark each package with Buyer's number, the number of packages in the shipment, serial number, if any, of the package, and the quantity and part number, of its contents.

c. Seller shall mail to Buyer, at the office of Buyer to which shipment is to be made, duplicate invoices, original bill of lading and/or original copy of express receipt, as the case may be, so that such instruments are received by the Buyer before the arrival of shipment, bills of lading, express receipts, packing lists, packing slips, and/or similar documents shall bear this purchase order number. Separate packing slips shall be included in each package of each shipment and shall also state the quantity part number, if any, and description of the contents of the package, the serial number of the package and the number of packages in the shipment.

d. Seller shall route shipments in accordance with instructions issued by Buyer's purchasing department and, in the absence of specific shipping and/or routing instructions, Seller shall ship all goods by most economical means of transportation, and provided further that the absence of specific shipping and/or routing instructions shall not be deemed a failure of cooperation on Buyer's part.

e. No charges shall be allowed for transportation, storage, boxing, crating or other packaging unless otherwise stated herein.

f. Unless otherwise specifically agrees herein, the time for discounting invoices will begin from the date of the receipt of goods by Buyer; provided however, invoices received after the fourth (4) of the month bearing a prior month's dating will be considered as having been issued in the month received by Buyer and will be included in that month's account without loss of cash discount privileges.

g. If Buyer finds it necessary to require shipment of any of the items covered by this Purchase Order by air or railway express rather than by freight because of the failure of Seller to meet the delivery requirements of this Purchase Order, Seller shall reimburse Buyer in the amount equal to the difference between the freight rate and the air or railway express rate, unless such failure to meet delivery requirements is due to causes beyond the control and without the fault of neglect of Seller.

7. TITLE AND RISK OF LOSS. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location and signature by a Buyer representative evidencing delivery to the Delivery Location.

8. INSPECTION. The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including without limitation transportation charges for the return of the defective Products and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and, in Buyer's discretion, terminate this Order for cause pursuant to Section 13. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

9. DELAY BY BUYER. Buyer may delay the applicable Delivery Date and/or acceptance by causes or events beyond Buyer's control upon provision of written notice to Seller of such causes or events. Seller shall hold such goods at the direction of Buyer and shall deliver them when Buyer notifies Seller that the cause or event affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs resulting from holding Products or delaying delivery at Buyer's request.

10. MOST FAVORED CUSTOMER. Seller represents and warrants that the price for the Goods is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods under this Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate this Order without liability pursuant to Section 13.

11. WARRANTY: Seller warrants to Buyer that all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.

12. INTELLECTUAL PROPERTY LICENSE: Seller, as part of consideration for the Order and without further cost to Buyer, hereby grants and agrees to grant to Buyer an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with Seller's performance of an Order, and Seller hereby grants to Buyer a license to repair, rebuild, or relocate and have repaired, rebuilt or relocated the goods purchased by Buyer under this Order. Seller further grants according to the terms of this Order a royalty free license to use any software with the goods specified herein, or if the good is itself software.

13. TERMINATION.

a. Buyer may terminate an Order, in whole or in part, 120 days' prior written notice to Seller. If Buyer terminates an Order pursuant to this Section 13(a), Buyer shall pay to Seller Seller's direct costs incurred in good faith in connection with Seller's efforts to fulfill the Order prior to Seller's receipt of the termination notice; provided, however, that in no event shall Buyer be liable for Seller's commitments or production arrangements in excess of the amount, or in advance of the time, necessary to meet Buyer's delivery schedule.

b. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with the applicable Order, including any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer

may terminate this Order upon written notice to Seller. If Buyer terminates the Order pursuant to this Section 13(b), Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

14. GENERAL INDEMNIFICATION. Seller shall defend, indemnify and hold harmless Buyer and Buyer's affiliates, successors or assigns, and their respective directors, officers, shareholders and employees, and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or relating to the Products purchased from Seller or Seller's negligence, willful misconduct or breach of the Order, including these Terms. Seller shall not enter into any settlement without Buyer's or applicable Indemnitee's prior written consent.

15. INTELLECTUAL PROPERTY INDEMNIFICATION. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

16. FORCE MAJEURE. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). "Force Majeure Events" include without limitation acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions, including without limitation change in cost of raw materials or components or reduced availability thereof, are not considered "Force Majeure Events." Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than [20] business days, Buyer may terminate this Order immediately by giving written notice to Seller.

17. Seller will maintain commercially reasonable insurance relative to its business and volume of products being sold to Buyer.

18. COMPLIANCE WITH LAW. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods.

19. CONFIDENTIALITY OF INFORMATION. All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

20. RIGHT TO SET OFF. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

21. LIMITATION OF LIABILITY. IN NO EVENT SHALL BUYER BE LIABLE FOR INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS. IN NO EVENT SHALL BUYER'S LIABILITY UNDER AN ORDER EXCEED THE TOTAL PRICE OF THE APPLICABLE ORDER.

22. MISCELLANEOUS

a. **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 the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, 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.

b. **Cumulative Remedies.** The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

c. **No Third Party Beneficiaries.** This Order 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.

d. **Relationship of Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

e. **Amendments; Modifications.** No change, amendment or modification to an Order is binding upon Buyer unless it is in writing, specifically states that it changes, amends or modifies a specified Order and is signed by an authorized representative of Buyer.

f. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

g. **Substitution Extras.** No substitution of materials or accessories may be made without Buyer's written consent. No charges for extras will be allowed unless such extras have been ordered in writing by Buyer and the price agreed upon.

h. **Waiver.** No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power

or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

i. Governing Law; Jurisdiction. This Contract shall be governed by the laws of the State of Tennessee without regard to principles of conflict of laws. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of Tennessee in each case located in the City of Athens and County of McMinn, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

j. Severability. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

k. Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including without limitation the following provisions: Set-off, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law; Venue, and Survival.