



TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** Any quotation for the sale of goods or sale of goods by **Berg Mfg, INC.** ("Seller"), shall be subject only to the terms and conditions set forth herein, and the terms and conditions hereof supersede any provision of Buyer's purchase order or other documents which are at variance with or purport to be in addition to these terms and conditions. There are no understandings or agreements, written or verbal, other than as set forth herein and on the face hereof; and no additions, deletions or modifications of these terms or any matter set forth on the face hereof proposed by Buyer in its printed forms or otherwise shall bind Seller unless accepted by a duly-authorized affiliate of Seller in writing, regardless of whether such other terms would materially alter the terms hereof. Any quotation issued by Seller is for informational purposes only, does not constitute an offer and expires forty-five (45) days after its date, and may be reinstated only by written confirmation by Seller. Stenographic and clerical errors are subject to correction.
2. **PRICES.** Prices are in U.S. currency and are F.O.B. Berg's plant, unless otherwise indicated on the face hereof and are subject to change without notice at any time prior to Seller's acceptance of Buyer's order. Unless specifically otherwise set forth, prices do not include the cost of shipping or freight, which is prepaid for Buyer's account, and any applicable sales, use, transfer, excise or other taxes, tariffs or custom duties; and Buyer will pay, on the terms provided for in Section 3 below, for all costs of shipping and freight and either pay directly or be charged by Seller for any such taxes, tariffs or custom duties levied upon the sale, transfer, import or use of the goods sold hereunder. Prices are subject to equitable adjustment upward at any time before delivery should economic factors beyond Seller's reasonable control, such as the price of materials or governmental actions, necessitate such action. Quoted prices are subject to change upon receipt of order and/or materials.
3. **PAYMENT.** Terms of payment, unless otherwise expressly agreed in writing, are net thirty (30) days from Invoice date. All payments shall be made in United States currency. Payment shall not prejudice claims on account of omissions or shortages in shipment, but no such claim will be allowed unless made within ten (10) days after receipt of the applicable shipment by Buyer. Payments not received when due are delinquent. Interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) or the maximum rate permitted by law, whichever is less, may be assessed on a monthly basis on delinquent accounts, and Buyer agrees to pay the same. Buyer further agrees to reimburse Seller for all costs of collection, including attorneys' fees and court costs. If, in the judgment of Seller, the financial condition of Buyer at any time does not justify shipment on the terms of payment originally specified, Seller may require full or partial payment in advance or may ship C.O.D. and, in the event of the bankruptcy or insolvency of Buyer, Seller shall be entitled to cancel any order then outstanding and shall be entitled to reimbursement for all costs and expenses therefore incurred, plus incidental and consequential damages.
4. **SHIPMENT.** The goods shall be shipped F.O.B. BERG's plant, and Seller shall exercise sole discretion in selecting a method of shipment unless a preferred method of shipment is specified in writing by Buyer, and Seller does not object to such method by notice to Buyer. Title to the goods and all risks of loss shall pass to Buyer upon delivery of the goods to the applicable carrier.
5. **DELIVERY.** Shipping dates are approximate only, and Seller is not responsible for delays or nonperformance resulting from (a) delays in receipt of final specifications, instructions or other required information from Buyer; (b) changes in specifications; or (c) force majeure, including,

without limitation, strikes, labor disturbances, material shortages, nonperformance by subcontractors or suppliers, or other abnormal manufacturing conditions, delays or failures of carriers or communications, fire, flood, storms, accident, riot, war and invasion, governmental requisitions or priorities, acts of God, or other causes beyond Seller's reasonable control. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF DELAY OR FAILURE TO DELIVER. All shipments hereunder shall be by truck at Seller's discretion, unless Buyer expressly specifies means of shipment and pays any additional cost thereof. Risk of loss during shipment shall be borne by Buyer.

6. **CANCELLATION.** Orders are not subject to cancellation or modification, in whole or in part, after Seller's acceptance, except with Seller's express written consent. Seller may require, as a condition to such consent, payment by Buyer to Seller of an amount specified by Seller to compensate Seller for: (a) the price of all goods that have been delivered and not previously paid for; plus (b) the actual cost incurred by Seller that is properly allocable to the goods not delivered at the time of decrease or cancellation, including, without limitation, the costs of materials or other items purchased for use in producing such goods and 10% of said costs as partial liquidation damages; plus (c) the profit, including reasonable overhead, that Seller would have realized from full performance by Buyer; plus (d) the costs of molds, tools, dies or other items produced by or for Buyer; plus (e) the reasonable costs incurred by Seller in making settlement and effecting collection hereunder provided that items listed as special preparations are not subject to cancellation except by payment of the full sales price. Buyer may require delivery of any goods for which payment is made. Any other items, however, shall remain the property of Seller, with the cancellation charge being deemed a service charge.
7. **LIMITED WARRANTY/DISCLAIMER.** SELLER WARRANTS THAT THE GOODS SHALL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP FOR THE PERIOD NOTED IN SELLER'S PRODUCT WARRANTY STATEMENT FOUND ON SELLER'S WEBSITE AT www.Bergco.com. SELLER'S LIABILITY HEREUNDER IN ANY CASE IS EXPRESSLY LIMITED TO, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT (IN THE FORM ORIGINALLY SHIPPED) OF GOODS NOT COMPLYING WITH THIS AGREEMENT WHETHER SUCH CLAIMS ARE FOR BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR PENALTIES OF ANY DESCRIPTION.
8. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) EXCEED TWO (2) TIMES THE PURCHASE PRICE OF THE GOODS AND/OR SERVICES GIVING RISE TO ANY SUCH CLAIM OR LIABILITY.
9. **INSPECTION.** Buyer agrees to inspect and accept or reject goods delivered by or for Seller within ten (10) days after delivery thereof to Buyer's facility, and all goods delivered shall be conclusively deemed accepted and to conform to contract requirements unless rejection is made or specific objection or notice of shortage, omission or nonconformity is given in writing within such ten (10) day period.
10. **LIMITATION OF ACTIONS.** Any action for a breach of contract or otherwise arising out of Seller's acceptance of Buyer's order or goods supplied must be commenced within one (1) year

after the cause of action has accrued and, thereafter, all such claims shall be barred notwithstanding any statutory period of limitations to the contrary.

11. **GOVERNING LAW; JURISDICTION; REMEDIES.** The rights and obligations of the parties hereto and the construction and effects of any contract formed pursuant hereto shall be governed by the laws of the State of Ohio, and the federal and state courts of Cuyahoga County, Ohio shall have exclusive jurisdiction and venue over disputes arising herein, and Buyer consents to the same. If Buyer fails to fulfill the terms of payment of any invoice or if the financial or business condition or responsibility of Buyer shall become impaired or unsatisfactory to Seller, Seller reserves the right to suspend work on the contract and/or withhold delivery of all or part of the goods subject hereto, without prejudice to any other legal or equitable remedy, until past due payments are made and satisfactory assurance of payment is received. Seller shall, in addition to the rights and remedies herein set forth, be entitled to all rights and remedies provided for under the Uniform Commercial Code and other applicable law as from time to time amended, and at equity. For sales made outside of the United States, the United Nations Convention on the International Sale of Goods shall not apply and both Seller and Buyer hereby expressly waive their rights thereunder.
12. **PATENT INFRINGEMENT.** Seller makes no warranty that the goods will be delivered free of the rightful claim of any third party by way of infringement or the like. If Seller determines, in its sole discretion, that making using or selling the goods would result in the infringement of any proprietary right, Seller reserves the right to withdraw the quotation and to cancel this agreement, without liability on the part of Seller.
13. **INDEMNIFICATION.** Complete compliance with the appropriate standards applicable for the destination of the goods, by law, rests with the Buyer for use of the goods. Buyer shall comply with and require its agents and employees to comply with all directions, safety notices, warnings and other instructions furnished by Seller, and shall use and require its agents and employees to use reasonable care in the installation and/or use of the goods. If Buyer fails to observe the provisions of this section, or if any injury or damage is caused, in whole or in part, by Buyer's failure to comply with applicable federal, state or local safety requirements, Seller shall have no obligation to Buyer or any other person in respect thereof, and Buyer shall indemnify, defend and hold Seller harmless against any claims, loss or expense for injury or damage arising directly from any such failure. Seller specifically disclaims any and all liability arising out of the use of the goods supplied hereunder other than the warranty obligations to Seller to the original Buyer. Buyer further agrees to indemnify, defend and hold harmless Seller from and against any and all claims for relief, rights or causes of action whatsoever arising from or relating to damages or personal injuries to an employee of Buyer where such damages or personal injuries arise from or relate in any way to the use by the employee of any goods being purchased pursuant hereto, including, without limitation, any manuals, drawings and technical information which describes or demonstrates how to use or operate the goods. To the extent necessary to give full and complete effect to this agreement to indemnify, Buyer, for itself and for its agents, successors and assigns, specifically and expressly waives whatever immunity from liability it might be afforded under Section 35, Article II of the Ohio Constitution, Ohio Revised Code Section 4123.74 and any and all other immunities afforded by constitutional provisions, statutes and common law principles currently recognized or that may from time to time be recognized in Ohio and all other states throughout the United States.
14. **CHANGES.** Prices are subject to adjustment if Buyer requests changes in specifications, quantities or delivery requirements, provided that, changes in the goods to be purchased, or any other terms of this order, may be made only upon the Buyer's written order and the agreement, in

writing, of a duly-authorized affiliate of Seller. All of the terms and conditions herein shall apply to goods to which such changes are made, and no modification in the terms and conditions hereof shall be binding on Seller unless contained in writing signed by an officer of Seller and expressly stating both that such terms are being modified and the nature of such modification.

15. **MISCELLANEOUS.** This agreement and the terms and conditions stated herein contain the entire agreement between the parties relating to the subject matter hereof, and any representation, promise, condition, affirmation of fact, course of prior dealing and usage of trade not incorporated herein shall not be binding on either party. Except as may be expressly provided to the contrary in writing, the provisions of this contract are for the benefit of the parties hereto and not for any other person.
16. **COMPLIANCE WITH LAWS.** Buyer shall fully comply with all applicable Federal, state and local laws and regulations (including, without limitation, the Walsh-Healey Act, 41 U.S.C.A. §§35-45, the Occupational Safety and Health Act of 1970, 29 U.S.C.A. §§651-678; The Fair Labor Standards Act of 1938, 29 U.S.C.A. §§201-219, as amended); and the matters set forth in paragraph 16 below, and shall indemnify and hold Seller harmless from any liability, cost or expense (including, without limitation, Seller's court costs and reasonable attorney's fees) resulting from Buyer's failure of compliance. Buyer agrees upon request to furnish Seller with a certification of compliance with respect to any of all such laws and regulations in such form as Seller may require.
17. **EXPORT CONTROL.** Buyer agrees to comply fully with all applicable laws and regulations of Buyer's country and of the United States pertaining to the export of any hardware, software, defense service, information or technical data provided by, through or with the cooperation of Buyer in the performance of work under any order subject to these terms and conditions. Any order subject to these terms and conditions may involve information or items that are subject to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) and that may not be released to Foreign Persons inside or outside the United States without the proper export authority. The ITAR defines a "Foreign Person" as any person who is not a U.S. citizen, a lawful permanent resident as defined by 8 USC 1101(a)(20), or a protected individual as defined by 8 USC 1324b(a)(3). Foreign Person is also defined as a corporation, a business, an association, a partnership, or any other entity that is not incorporated or organized to do business in the United States and as international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions). Buyer further agrees that it will not export or re-export, directly or indirectly, any hardware, software, defense service, information or technical data provided by, through or with the cooperation of the Seller to any Foreign Person, including persons employed by or associated with, or under contract with the Buyer or Buyer's lower-tier suppliers without the prior written consent of the Seller and without first obtaining any required export license or other approval. In addition, should Buyer participate in the performance of this Order at Seller's facilities, Buyer shall inform Seller in advance in writing of the country of citizenship (or countries, in the case of dual citizenship) of each Foreign Person employee, agent, or representative of Buyer or of Buyer's suppliers prior to such person being allowed access to Seller's facilities. The Foreign Person employees, agents, or representatives of Buyer or Buyer's suppliers shall not participate in the performance of any work under any order subject to these terms and conditions at Seller's facilities without Seller's written consent. Buyer shall comply with the registration requirements of the International Traffic in Arms Regulations at 22 CFR §122.1, as applicable. Buyer shall indemnify and hold Seller harmless against all claims, demands, damages, costs, fines, penalties, attorneys' fees and other expenses arising or resulting from Buyer's failure to comply with this clause.

18. **TAXES.** Buyer shall pay (and prices do not include) all sales, use, services, excise, tariffs, duties or similar taxes or charges unless Buyer provides Seller with a valid exemption certificate.
19. **CONFIDENTIALITY.** "Confidential Information" means all information and data relating to Seller's technology, products, services or other business, in whatever form such information may be disclosed, including, without limitation: (i) product or service information, including designs and specifications, development plans, methodologies, technical approaches, patent applications, and strategy; (ii) marketing information, including lists of potential or existing customers or suppliers, marketing plans and surveys; (iii) computer software including codes, flowcharts, algorithms, architectures, menu layouts, routines, report formats, data compilers and assemblers; and (iv) financial information, including sales, pricing and revenue information. Buyer agrees not to use or disclose any Confidential Information of Seller for any purpose except as may be required in order to support the sale of goods without the written consent of Seller. These terms and conditions of sale impose no obligation upon Buyer with respect to Confidential Information which (a) was known to Buyer prior to receipt; (b) is or becomes a matter of public knowledge through no fault of Buyer; (c) is rightfully received by Buyer from a third party without restriction on disclosure; (d) is independently developed by Buyer or (e) is disclosed by Buyer with Seller's prior written approval. Notwithstanding anything to the contrary in these terms and conditions of sale, Buyer shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made – (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Accordingly, Buyer has the right to disclose in confidence trade secrets to Federal, State, and local government officials, or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law. Buyer also has the right to disclose trade secrets in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal and protected from public disclosure.