

**TERMS AND
CONDITIONS***

These are the Terms and Conditions of sale for Long Island Tinsmith Supply Corp. ("Seller"). There are no other terms of sale unless Seller agrees in writing to different terms with you, the "Purchaser" of Seller's products:

- 1. ACCEPTANCE OF ORDERS.** Seller's offer to sell products to Purchaser or acceptance of Purchaser's order is expressly conditioned upon Purchaser's acceptance of these Terms and Conditions ("Terms"). Purchaser's acceptance, use or holding of Seller's products for 10 days after shipment also establishes Purchaser's acceptance of these Terms. Seller expressly rejects and objects to all new, different or additional terms of sale submitted by Purchaser. Seller reserves the right to select its own customers and the right to reject any order. Affidavits or certificates of compliance must be requested when orders are placed.
- 2. PRICES.** All prices are subject to change without notice. Unless otherwise specified, orders will be shipped and invoiced at the price in effect at the time of shipment, and price adjustments for products in transit or in Purchaser's inventory will not be allowed. Any tax or other charge on the production, sale or shipment of the products imposed by federal, state or local governmental authorities will be added to the price to be paid by Purchaser.
- 3. TERMS OF PAYMENT.** Subject to the approval of Seller's credit department, terms of payment are those in effect for product sales as of the date of shipment. Purchaser is also responsible for amounts due under No. 11 below.
- 4. DELIVERY.** All product sales are Free Carrier ('FCA'), as defined by Incoterms® 2010, Seller's place of shipment. Seller shall have no liability for delays, damage, or delivery failures occurring after the product is delivered to the carrier. Purchaser is solely liable for detention and demurrage charges assessed at the destination. Product shortages and visibly damaged or defective products must be reported to Seller within 10 days of delivery. Purchaser may not withhold payment on uncontested product deliveries.
- 5. SHIPMENT AND ACCEPTANCE OF PRODUCTS.** Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charge. Buyer is conclusively presumed to have inspected and accepted the Products unless Buyer notifies Seller in writing of incorrect, unspecified or missing Product, or other basis for nonacceptance of Product within one business day following Buyer's receipt or, in the event of latent defects, within one business day following the date when Buyer should have discovered such defects exercising reasonable due diligence. Unless specific written instructions to the contrary are supplied by Buyer and accepted by Seller, methods and routes of shipment will be selected by Seller, but Seller will not assume any liability in connection with shipment nor be deemed a common carrier or its agent. Shipping and/or completion dates are approximate and are based on prompt receipt of all necessary information and approvals from Buyer.
- 6. TITLE AND RISK OF LOSS; SECURITY INTEREST.** Title to and all risk of loss or damage to the products vests in Purchaser when products are delivered as set forth herein, regardless of any shipping and insurance arrangements made by Seller on Purchaser's behalf. However, Seller reserves, until full payment is received, a purchase money security interest in each product delivered.
- 7. RETURNS.** No request for returns based on damaged or defective products will be approved unless received within the time periods set forth in No. 4 and No. 5; (b) Where Seller determines, in its sole discretion, to accept returns for the convenience of Purchaser, the products are to be returned to the point of shipment, at Purchaser's expense, properly packed. Seller will issue a credit for the quantity of product received at Seller's shipping point in resalable condition, as determined by Seller in its reasonable discretion, less: (i) 25% of the original purchase price for handling and reconditioning; or, if greater, (ii) the actual charges incurred.
- 8. LIMITATION OF WARRANTIES.** All claims for non-conforming or defective Products must be made in writing within one business day after delivery to Buyer, and any claims not made within that period shall be deemed waived and released. Seller's sole responsibility with respect to such claims shall be to assist Buyer with the processing of Manufacturer's Warranty Claims. In no event shall Seller be liable either for any labor incurred to repair, remedy or install any such replacement Products or for any lost profits, loss of good will, or any special, indirect, incidental, or consequential damages due to any cause whatsoever. No suit or action shall be brought against Seller more than one year after any related cause of action has accrued. THE FOREGOING CONSTITUTES SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY WITH RESPECT TO PRODUCTS SOLD BY SELLER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. SELLER DISCLAIMS ALL OTHER WARRANTIES, ORAL, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT SELLER IS NOT LIABLE FOR ANY LOST PROFITS, LOSS OF GOOD WILL, OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.
- 9. RELEASE AND DELIVERY WAIVER.** As to any Products sold and/or delivered hereunder, Buyer releases Seller from any liability arising hereunder for personal injuries, known or unknown, and damage to property real or personal caused by or arising from the Products sold and/or delivered hereunder and agrees not to sue Seller under any theory of strict liability or tort, negligence, contract or otherwise for any claim or demand for personal injuries and property damage which in any manner arises out of the sale, use, application, transportation or otherwise of the Products sold and/or delivered hereunder. The foregoing disclaimers of warranty and disclaimer of liability shall be binding upon Buyer and any successors in title, project owners, product end-users, assigns, transferees, and other third parties. In connection with the delivery of any Products, Seller expressly disclaims responsibility for damage to driveways, lawns, sprinkler systems, gardens, septic tanks, drainfields and/or existing landscaping as a result of job site deliveries. By executing a delivery ticket and/or accepting Product delivery, the property owner, contractor, subcontractors, and suppliers, acknowledge that they are authorized both to accept delivery and release the Buyer from and against any damage to any of their property caused by the weight of any truck, rooftop delivery operations or otherwise. The Buyer hereby waives any and all claims for damages which may be made during the delivery of Seller's Products.
- 10. LIMITATION OF REMEDY.** PURCHASER'S EXCLUSIVE REMEDY AND THE LIMIT OF SELLER'S LIABILITY FOR BREACH OF THE LIMITED WARRANTY SET FORTH IN No. 7, WHETHER BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY AT LAW OR IN EQUITY, SHALL BE, AT SELLER'S OPTION, REPAIR, REPLACEMENT WITH A LIKE QUANTITY OF NONDEFECTIVE PRODUCT OR REFUND OF THE PURCHASE PRICE, PLUS REASONABLE HANDLING AND TRANSPORTATION CHARGES INCURRED FOR APPROVED RETURNS UNDER No. 6 ABOVE.
- 11. NO RECOVERY OF CONSEQUENTIAL OR SPECIAL DAMAGES.** SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY AT LAW OR IN EQUITY, FOR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT ADDITIONALLY, CONSEQUENTIAL AND SPECIAL DAMAGES SHALL NOT BE RECOVERABLE EVEN IF THE REPAIR, REPLACEMENT OR REFUND REMEDY FOR SELLER'S BREACH OF ITS LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON.
- 12. FORCE MAJEURE.** Seller shall not be liable, nor deemed in default hereunder, for any failure or delay in delivering the products or in the performance of its other obligations to Purchaser hereunder, caused by or arising out of: (a) compliance in good faith with any applicable foreign or

domestic governmental regulation or order of whatever nature and whether foreign, federal, state or local; (b) all acts of God (such as, but not limited to, floods, fires, or tornadoes); (c) strikes and other labor trouble; (d) delays or nonperformance by suppliers (or other third parties) of raw materials, power or other needed supplies or services; (e) delays or nonperformance by transporting carriers; and/or (f) any other cause, contingency, or circumstance not subject to the reasonable control of Seller affecting the performance of Sellers obligations hereunder. Seller shall determine in good faith the extent to which it can reasonably control a cause, contingency, or circumstance affecting its performance obligations.

13. DEFAULT. In the event of Purchaser's default, Seller may terminate any purchase order or agreement with Purchaser. Upon default, Purchaser agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the event Seller reasonably anticipates a default by Purchaser, whether involving collecting payments due or otherwise enforcing these Terms. Purchaser also agrees to pay Seller simple interest on unpaid amounts from due date at the lesser of 1-1/2% per month or the highest lawful rate.

14. SEVERABILITY. If any of these provisions are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of these Terms shall be unaffected. Also there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

15. MODIFICATION OR TERMINATION. These Terms and the specific order provisions contained on Seller's order set are the entire contract between the parties with respect to this order. This cancels and supersedes all previous agreements, confirmations, and terms of sale, oral or written. No waiver or modification of these Terms shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller. Additional or different terms submitted by anyone other than Seller are specifically rejected and shall be deemed to be of no effect.

16. GOVERNING LAW; JURISDICTION. The Agreement and these Terms are governed by, and interpreted according to, the internal laws of the State of New York without applying its choice of law provisions. The Convention on the Sale of International Goods shall not apply to sale of products under these Terms and Conditions. The parties consent to the jurisdiction of the state and federal courts in New York and the effectiveness of service of process by certified United States mail.

17. CONFIDENTIALITY. Neither Seller nor Purchaser shall disclose any confidential information of the other party to any third party without such other party's prior written approval, unless a party is obligated to disclose such information by law or court order.

12/2018