

# C.L. SMITH INDUSTRIAL COMPANY & AFFILIATES

## STANDARD TERMS AND CONDITIONS OF SALE

(REVISED: MARCH 27, 2008)

1. Applicability. These Standard Terms & Conditions shall apply to all supply arrangements, including purchase orders, in respect of any customer ("Buyer") of C. L. Smith Industrial Company and/or its affiliates (collectively, "Seller"). Any Buyer offer to contract, whether through a purchase order, verbally or otherwise, on any terms other than those set forth in these Standard Terms & Conditions, is hereby rejected. Buyer's acceptance of any goods shipped or services provided by Seller shall constitute acceptance of these Standard Terms & Conditions, regardless of any conflicting terms or waiver language contained in any Buyer purchase order, general terms & conditions, or other supply arrangement. All Seller quotations are exclusively subject to these Standard Terms & Conditions and such quotations shall only be considered an offer to sell and not acceptance of any purchase order, supply arrangement or other document received from Buyer. These Standard Terms & Conditions may not be amended or modified except by a writing signed by a duly authorized representative of Seller. Unless otherwise agreed to in a written supply arrangement, Seller shall have no obligation to accept any particular Buyer purchase order or supply arrangement, regardless of whether it has previously accepted the same.

2. Product Specifications. Specifications for all products sold by Seller are listed on Seller's website. Seller does not manufacture products with specifications materially unique from those listed on its website. Any purchase order or supply arrangement that purports to require Seller to furnish Buyer with a product having specifications other than those listed on Seller's website shall be deemed amended to permit Seller to freely substitute those product(s) on its website that most closely match Buyer's specified product.

3. Governing Law. The parties' supply arrangement is governed by the laws of the State of Missouri without regard to its principles of conflicts of laws. Any cause of action arising between Buyer and Seller under any supply arrangement shall be brought only in a court located in St. Louis County

or St. Louis City, Missouri and both parties hereby submit to personal jurisdiction therein.

4. Shipping & Delivery. Seller will use reasonable efforts to ship in accordance with its estimated delivery date, but all delivery dates are approximate. To the extent a quoted price for any product does not expressly include shipping or insurance, the cost thereof shall be the sole responsibility of Buyer and paid directly by Buyer. Seller shall not be liable for damages of any kind (including any direct, incidental, consequential or punitive damages) for failure to meet any Buyer specified delivery date, nor shall Seller be liable for any delay as a result of events or circumstances beyond its reasonable control. Seller shall have no responsibility to ship goods to any location other than those in the United States, Canada or Mexico unless Buyer has previously secured all applicable permits and licenses, and paid any applicable tariffs, taxes and similar fees and charges.

5. Title. Risk of loss to any products shall pass to Buyer upon delivery to any carrier at Seller's facility or place of shipment. Seller shall not be liable for any loss or damage resulting from the shipment or transportation of product shipped in accordance with Buyer's instructions. Title to products shall not pass to Buyer until they are fully paid for by Buyer.

6. Price Changes. With respect to any "open" or "blanket" purchase order of Buyer, or if any supply arrangement contemplates the purchase/sale of products or services beyond a 6 month period, Seller may from time-to-time (but no more than once in any 6 month period) increase the price of any particular product or service by an amount proportional to any increase in Seller's labor, utility or other costs respecting such product or service. Additionally, in the event Seller's raw material costs increase, Seller may pass on such increases to Buyer at any time on 30 days prior notice.

7. Terms. Buyer agrees to pay each invoice within thirty (30) days of the invoice date. Buyer

agrees to pay a finance charge of 1 ½ percent per month at the annual rate of 18% per year or the highest rate allowed by law, whichever is less, as well as all expenses, attorneys' fees and court costs which Seller incurs as a result of Buyer's default. Any agreement of Seller to extend credit to Buyer is conditional upon Buyer's timely payment of invoices, and upon the continued financial stability of Buyer, which stability Seller shall have the right to verify through financial information requests.

8. Taxes. Prices do not include any applicable sales, use, excise or any other tax. Any applicable tax will be added to prices at time of invoicing and the Buyer agrees to pay the same. Buyer agrees to reimburse Seller for any taxes it may be required to pay as a result of any supply arrangement.

9. Limited Warranty.

(a) All Product sold to Buyer hereunder is warranted by Seller for a period of 90 days from the date of delivery to Buyer (i) to be free from defects in materials or workmanship and (ii) to comply with the specifications listed on Seller's website.

(b) EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN, SELLER HAS MADE NO AND DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST PATENT OR OTHER INFRINGEMENT.

(c) The limited warranty provided above does not cover damages, defects or malfunctions caused by (i) failure to follow Seller's instructions or industry standards; (ii) abuse, misuse or the negligent acts or conduct of parties not under the reasonable control of Seller; or (iii) acts of God and the actions of third parties.

10. Limitation of Liability.

(a) BUYER'S EXCLUSIVE AND SOLE REMEDY WITH RESPECT TO ANY PRODUCT THAT DOES NOT CONFORM TO SPECIFICATIONS, OR TO ANY EXPRESS WARRANTY PROVIDED HEREIN, SHALL BE THE REPLACEMENT OF THE DEFECTIVE

PRODUCT. IN THE EVENT SELLER IS UNABLE WITHIN A REASONABLE PERIOD OF TIME TO PROVIDE SUCH REPLACEMENT THEN IT SHALL REFUND THE PURCHASE PRICE. SELLER'S OBLIGATION TO REPLACE OR REFUND AS SET FORTH ABOVE SHALL BE BUYER'S EXCLUSIVE REMEDY IN CONNECTION WITH ALL PRODUCTS SOLD.

(b) SELLER SHALL HAVE NO LIABILITY TO BUYER, BUYER'S CUSTOMERS OR THIRD PARTIES FOR ANY DIRECT, INDIRECT, PUNITIVE OR EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS OR LOSS OF GOOD WILL, ARISING OUT OF ANY SUPPLIER ARRANGEMENT OR SELLER'S PERFORMANCE OR BREACH, ANY PRODUCT OR ITS DELIVERY, INSTALLATION, USE, REPAIR, REPLACEMENT OR MAINTENANCE OR THE PERFORMANCE OR BREACH OF ANY WARRANTY, WHETHER ARISING OUT OF CONTRACT, TORT OR OTHERWISE. IN ALL EVENTS THE TOTAL LIABILITY OF SELLER TO BUYER UPON ANY AND ALL CLAIMS OF WHATEVER NATURE SHALL NOT EXCEED THE PURCHASE PRICE FOR THE PRODUCTS. THIS SECTION SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

11. Force Majeure. When delays are caused by events beyond Seller's control, Seller's time for performance shall be extended by the period of such delay. If, as a result of delays or contingencies beyond Seller's control, Seller is unable to perform this contract in whole or in part then, to the extent that it is unable to perform, the supply arrangement shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion thereof, if any. Contingencies beyond Seller's control include, without limitation, acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, earthquakes, earth movements, accidents, strikes, labor unrest, delays in transportation, shortage or interruption of transportation, fuel, electricity, labor or materials, or any circumstance or cause beyond the control of Seller in the reasonable conduct of its business.

12. Severability of Breach; Liability. Failure to deliver any portion of the product installment due or

a defect in any delivery constitutes a severable breach only and Buyer cannot treat the whole supply arrangement as breached, unless such failure to deliver or defective delivery constitutes a substantial breach in accordance with the customs and usages of the industry. If an adjustment is reached for any failure to deliver or for any defective delivery, or replacement made therefor, such default or defective delivery shall thereafter be treated as if it had not occurred. Buyer shall pay for the products delivered on the due date on all goods delivered regardless of any failure to deliver or defective delivery as to any other installment or shipment.

13. Installment; Security. Unless otherwise specified herein, Seller reserves the right to make deliveries in installments. Delay in delivery of all installments shall not relieve Buyer of (i) its obligation to pay for all installments received prior to such delay, and (ii) its obligations to accept remaining deliveries. Seller reserves the right, even after partial shipment on account of any order, to require satisfactory security from Buyer for performance of Buyer's obligation. Buyer's refusal to furnish such security will entitle Seller to suspend shipments until such security is furnished, and will entitle Seller, at its option, to cancel the order, in such event. Buyer shall nevertheless be required to pay for such shipments as may have been received by Buyer prior to Seller's cancellation of the order.

14. Waiver. Waiver by Seller of a breach by Buyer of any provision of any supply arrangement shall not be deemed a waiver of future compliance therewith, and such provision, as well as other provisions hereunder, shall remain in full force and effect.

15. Severability. Should any part or provision of these terms be determined by a court or other competent authority to be unenforceable or prohibited in any state or other jurisdiction, then such provision shall, as to such provision and such jurisdiction only, be deemed severed to the extent of such unenforceability or prohibition. Subject to such severance, all remaining provisions of these Standard Terms & Conditions shall continue in full force and effect.

16. Intellectual Property. (a) If Buyer provides Seller with any specifications for goods or services to be furnished by Seller and Seller undertakes to manufacture or provide the same, Buyer shall

reimburse, indemnify, defend and hold Seller and its affiliates harmless from and against any claims, demands, liabilities, damages, suits, judgments, losses, costs and/or expenses (including attorneys' fees and other expenses of any litigation) suffered or paid by Seller or its affiliates, concerning, arising out of or relating to any claimed or actual infringement of any patent, copyright, trade secret or other intellectual property rights of any third party respecting such goods or services.

(b) Except with respect to any product that Buyer has specifically contracted with Seller to design or develop in a written supply arrangement, (i) any product or any improvement to any product developed by Seller, and (ii) any method or process of production respecting the product or improvement thereto developed by Seller, shall be the sole and exclusive property of Seller.

(c) Upon prior written consent of Seller, Buyer may use Seller's trademarks only to sell new products purchased by Buyer directly from Seller, and for no other reason. Buyer shall not take any or fail to take any action that may dilute Seller's trademarks.

(d) Except as expressly set forth herein, (i) Seller shall have no obligation to sell, lease, assign, license, transfer or otherwise permit the use of intellectual property of any kind to Buyer, and (ii) Buyer shall have no right to use any intellectual property of Seller without the express written consent of Seller, which may be withheld in its sole discretion. Seller may enforce this Section through injunction or otherwise, without the necessity of posting any bond or proving irreparable harm.

17. Termination. Unless otherwise agreed to in a fully executed supply arrangement, Seller may terminate any supply arrangement, including open or continuing purchase orders: (i) on reasonable notice to Buyer, for any or no reason, or (ii) immediately, if Buyer fails to timely pay for goods delivered or services rendered, breaches any of its other obligations under any Supply Arrangement, violates or refuses to abide by or acknowledge these Standard Terms, or threatens any of the foregoing.

18. Miscellaneous. (a) Buyer shall have no right to (i) inspect Seller's facilities, (ii) examine Seller's books, records or other documents, or (iii) seek or obtain any information from Seller deemed

proprietary or confidential by Seller in its sole discretion.

(b) Seller shall have no obligation to transfer, sell, lease, license or otherwise permit Buyer to use any raw materials, work-in-progress, tools, dies, jigs, fixtures, moulds, patterns, templates, models, mock-ups, gauges, drawings, equipment/machinery or other means of production, except where the same was specifically designed, developed and/or purchased by Seller solely for Buyer's account under a written and fully executed supply arrangement and has been fully paid for by Buyer.

(c) While Seller shall reasonably maintain all tooling owned by Buyer in Seller's possession, Seller shall have no liability for any damage or loss of any tooling, equipment or other property unless such damage or loss arises out of the sole negligence of Seller or its agents.

(d) Seller shall have no obligation to comply with the terms of any agreements between Buyer and any third party unless Seller is furnished a written copy of such agreement and expressly agrees to so comply in a fully executed, written instrument.

(e) Seller shall not be required to obtain any property, liability or other type of insurance for its own account or for the account of Buyer or its property, or any third party.

(f) Seller shall not be required to arbitrate any claim against Buyer or Buyer's customers or agents, or bring or defend any such claim in any particular court or forum or in any particular jurisdiction.

(g) Buyer shall have no right to dictate personnel usage or changes in Seller's workforce, or to mandate labor union relations, affiliations or other changes to Seller's workforce management or labor relation policies.

(h) Seller shall have the right to manufacture any product for Buyer in any of its facilities without Buyer's prior approval or consent.

(i) Buyer shall have no right to notice of any sale of stock or assets of Seller. In addition, no sale of Seller's stock or assets shall give rise to any

Buyer right of termination of any supply arrangement with Seller.

(j) Seller's alleged or actual default with respect to any particular supply arrangement shall have no effect on Buyer's obligation to perform under any other supply arrangement between Buyer and Seller, nor shall Buyer have any right of set-off against Seller in respect of any such other supply arrangements.

(j) Buyer may not assign its interest in any supply arrangement with Seller without Seller's written consent..