



TERMS AND CONDITIONS OF SALE

1. **ENTIRE AGREEMENT.** THE PROVISIONS ON THE FACE HEREOF AND THESE TERMS AND CONDITIONS OF SALE CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER AND SUPERSEDE BUYER'S PURCHASE ORDER AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES, WHETHER WRITTEN OR ORAL. ANY DIFFERENT OR ADDITIONAL PROVISIONS, INSTRUCTIONS OR TERMS IN YOUR ACCEPTANCE OF THIS ORDER ARE HERBY OBJECTED TO. ACCEPTANCE OF THE GOODS BY THE BUYER SHALL CONSTITUTE AN UNQUALIFIED ACCEPTANCE BY THE BUYER OF THESE TERMS AND CONDITIONS NOTWITHSTANDING ANY CONTRARY TERMS, CONDITIONS, OR WARRANTIES EXPRESSED IN BUYER'S PURCHASE ORDER OR ANY OTHER DOCUMENT.
2. **PRICES.** The products listed hereon shall be invoiced to Buyer at Seller's prices in effect at time of shipment.
3. **LIMITED WARRANTY REMEDY.** Seller's maximum liability for any loss or damage arising out of, connected with, or resulting from this Agreement, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any goods covered by or furnished under this Agreement shall, in no case, exceed the price of the defective or nonconforming goods. Other than as set forth above, SELLER MAKES NO WARRANTY OF ANY KIND, WHATEVER, EXPRESSED OR IMPLIED; AND ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY THE SELLER. In no event shall Seller be liable for special or consequential damages (or expenses), including, but not limited to, loss of profits or revenue, loss of use of the goods, or any associated goods, cost of capital, cost of substitute goods, facilities or services, downtime costs, or claims of customers of the Buyer for damages; and other than as set forth above, Seller expressly disclaims all liability for injuries and all loss, expense and damage arising from any cause or for any reason whatsoever including the negligence of the Seller in the manufacturing process, including testing and inspection, to any and all persons who buy, use or are otherwise injured by the goods which are the subject of this Agreement. Every claim on account of defective goods, short count, or for any other cause shall be deemed waived by the Buyer unless made in writing within 2 months from the receipt of goods to which such claim relates. Defective goods may be returned to Perfection Corporation only upon permission and definitive instructions from Perfection Corporation.
4. **SHIPPING TERMS.** Delivering terms are F.O.B. Seller's Plant in Madison, Ohio, unless otherwise stated on the face of this order
5. **TAXES.** Any tax imposed by Federal, State, Municipal or other governmental authority with respect to this transaction shall be paid by Buyer in addition to the quoted sales price.
6. **DELAY AND NON-DELIVERY REMEDY.** Seller shall not be liable for failure or delay in shipping goods hereunder if such failure or delay is due to Buyer's acts or omissions, an act of God, war, labor difficulties, accident, inability to obtain raw materials, or any other cause of any kind whatever beyond the control of the Seller. Buyer's sole and exclusive remedy for any delay or failure to manufacture, ship or deliver shall be limited to the return of the products and/or the recovery of any part of the invoice price of said products theretofore paid to Seller. In no case shall Seller be liable for loss of profits or any incidental or consequential damages or expenses on account of any delay in delivery or any failure to manufacture, ship or delivery, whether or not excused hereunder.
7. **FAIR LABOR STANDARDS ACT.** Seller hereby certifies that the goods which are the subject of this order are produced in compliance with all applicable requirements of Sections 6, 7 and 12 of The Fair Labor Standards Act, as amended, and of the regulations of the United States Department of Labor issued under Section 14 thereof.
8. **AUTHORITY.** No agent, employee or representative of the Seller has any authority to bind the Seller to any affirmation, representation or warranty concerning the goods which are the subject of this order, and unless affirmation, representation or warranty made by any agent, employee or representative is specifically included in this order, it has not formed a part of the basis of this bargain and shall not in any way be enforceable.
9. **MODIFICATION.** None of the terms and conditions contained in this order may be added to, modified, superseded or otherwise altered except by written instrument signed by any authorized representative of the Seller and an authorized representative of the Buyer and delivered to the respective parties.
10. **CONTROLLING LAW.** This Agreement shall be construed, and the rights and duties of the parties hereto shall be determined, in accordance with the law of the State of Ohio. This Agreement shall not result in a binding contract until it is accepted by Seller at Seller's office in Madison, Ohio.
11. **ASSIGNMENT.** Absent the express written consent of Seller, any attempt to assign or delegate any right or duty of Buyer arising under this Agreement shall be void and of no effect.
12. **CARRIER LOSS AND DAMAGE: REMEDY.** Under our terms of sale we have no responsibility for shipments after we have tendered them complete and in good order to the carrier. IT IS YOUR RESPONSIBILITY TO FILE CLAIM WITH A CARRIER FOR ANY LOSS OR DAMAGE. We are willing to assist you in every possible way in collecting claims for loss or damage, but this willingness on our part does not make us responsible for collection of claims or replacement of materials. If any of the goods specified on the carrier's delivery receipt are short or damaged, do not accept them or sign the receipt until a carrier agent makes a shortage or damage notification on the receipt. If concealed loss or damage is discovered, notify the delivering carrier at once and request inspection. If the above procedure is not followed, there is absolutely no way to compel carriers to make restitution.
13. **TITLE.** Title to the goods which are the subject of this Agreement shall remain and continue in the Seller until payment in full of the contract price set forth herein.
14. **LIMITATION OF ACTION.** No action shall be brought for any breach of the contract formed as a result of this Agreement offer and/or any claim for defect in the goods, design and/or workmanship, more than two years after the accrual of the cause of action therefor.
15. **PAYMENT TERMS.** Any open account balances extending beyond Elster Perfection's stated terms are subject to a 1-1/2% carrying charge each month based on the average unpaid balance.
16. **INDEMNIFICATION.** Elster Perfection shall not be liable for damages to any person or to any property in connection with the delivery, installation or use of any goods sold under this Agreement and Buyer shall indemnify and hold harmless Perfection Corporation against all such liability.
17. **PARAGRAPH HEADINGS.** Paragraph headings are inserted for convenience only and shall not be deemed to limit or affect the scope of the provisions contained therein.