



## The Cleveland Plumbing Supply Company Terms and Conditions of Sale

The sale of any product (the "Product") by The Cleveland Plumbing Supply Company ("Supplier") to the buyer (the "Buyer") is expressly made conditional on Buyer's consent to all terms and conditions herein, including those which are different from or in addition to any terms and conditions contained in any form supplied by Buyer to Supplier, and Buyer's placement of an order for any Product from Supplier, and/or acceptance of delivery of same, shall be conclusive evidence of Buyer's acceptance of these terms and conditions of sale. Supplier objects to any terms or conditions contained in any form or document supplied by Buyer to Supplier, and rejects such terms or conditions.

1. **Prices and Taxes.** All prices are subject to change, to correct arithmetical and/or clerical errors and to reflect any increase or decrease in Supplier's costs. Buyer, in addition to the price of the Product sold, shall assume and pay any and all sales, use, excise, license, property and/or other fees or taxes, together with any interest and penalties thereon, relating to the sale of any Product supplied by Supplier or any resulting order, and shall indemnify Supplier and hold it harmless from any claim or liability for any such tax, along with any interest, penalties or expense in connection therewith.

2. **Delivery.** Any estimated delivery date shall constitute Supplier's best estimate based on scheduling requirements at the time the order is entered. Supplier shall not be liable for delivery on any specific date, or within any specified period of time. The promised delivery date is the best estimate possible, based on current and anticipated production loads, of when Product will ship. SUPPLIER SHALL HAVE NO LIABILITY FOR LOST PROFITS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES DUE TO DELIVERY DELAYS. Unless otherwise agreed in writing, Supplier reserves the right to make partial shipments. (Claims for shortage in quantity or for damage in shipment due to negligence shall be deemed waived unless presented to Supplier in writing within 48 hours after delivery.)

3. **Payment Terms.** Payment terms shall be net 30 days, unless otherwise agreed in writing between Supplier and Buyer. Remittances shall be as directed by Supplier, and interest at the rate of 1 1/2% percent per month or whatever lesser maximum amount is allowed by law, will be paid by Buyer on any unpaid amounts from and after their due dates unless otherwise agreed.

4. **Credit Approval.** If the financial ability of the Buyer to pay is determined at the sole discretion of Supplier to be unacceptable for any reason, or if Buyer fails to make any payments in accordance with the terms hereof, Supplier may cancel this order and/or refuse to deliver any undelivered Product, and Buyer shall immediately become liable to Supplier for the unpaid amounts of all Product delivered, and for any and all other damages, including loss of reasonable profits caused by Buyer's default.

5. **Warranty.** EXCEPT FOR THE WARRANTIES PROVIDED BY THE MANUFACTURER OF THE PRODUCT (IF ANY), SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND PRODUCT QUALITY, OTHER THAN THOSE WARRANTIES IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER APPLICABLE LAW. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, INDEMNIFICATION OR OTHERWISE, SHALL SUPPLIER BE LIABLE TO BUYER OR ANY CUSTOMER OF BUYER FOR ANY, DIRECT (EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT) INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR DAMAGES OF ANY KIND ARISING OUT OF THE SALE, FUNCTIONING, OR THE USE OF ANY OF THE PRODUCT PROVIDED HEREUNDER, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUPPLIER SHALL HAVE NO LIABILITY TO BUYER OR TO ANY CUSTOMER OF BUYER HEREUNDER, BUYER AGREES TO HOLD HARMLESS AND INDEMNIFY SUPPLIER FOR ANY SUCH CLAIMS. Defective Product may be returned to Supplier, after inspection by Supplier and upon receipt of written shipping instructions from Supplier; Product so returned will be repaired, replaced or refunded at Supplier's option.

6. **Limitation of Liability.** Supplier's liability is expressly limited to the refund, repair or replacement of defective Product. SUPPLIER SHALL NOT BE LIABLE TO BUYER, EITHER DIRECTLY OR BY WAY OF CONTRIBUTION OR INDEMNITY, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, or for any loss, damage, or expense directly or indirectly arising from the purchase or use of the Product or from any other cause including, but not limited to, property damage, lost profit, damages based on loss of use of the Product, delays, or damage for cover.

7. **Force Majeure.** Supplier shall not be in default because of its delay or failure to deliver or perform resulting, in whole or in part, in Supplier's opinion, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, tariff, ordinance, regulation, ruling or order, or (ii) the lack of usual means of transportation, fires, floods, explosions, strikes or any other accidents, contingencies, or events, at Supplier's facility or elsewhere (whether or not beyond the Supplier's control) which directly or indirectly interfere with, or render substantially more burdensome, Supplier's delivery, or performance (collectively, a "Force Majeure"). Should a failure or delay in Supplier's performance occur because of any of the foregoing, Supplier shall have the option of either canceling this order, or delaying performance hereunder for any reasonable period of time, during which time this agreement shall remain in full force and effect. Supplier shall not have any liability to Buyer for any damages caused to Buyer as a result of a Force Majeure as identified in this paragraph or otherwise by law. Supplier's liability for failure or delay in performance for any cause whatsoever whether beyond Supplier control or not, shall not include incidental or consequential damages.

8. **Cancellation.** No order accepted by Supplier shall be countermanded, canceled or altered by Buyer, nor shall Buyer otherwise cause the work or shipment to be delayed, except with the prior written consent of Supplier, and upon the terms and conditions approved by Supplier in writing.

9. **Place of Contract and Exclusive Jurisdiction.** All orders are subject to final acceptance by Supplier at its designated facility. Any contract arising out of the placing of any such order and the acceptance thereof as herein provided shall be construed in accordance with the laws of the State of Ohio, without giving effect to conflict of law rules. Supplier and Buyer irrevocably consent and agree that any dispute arising out of or in connection with the sale of any Product by Supplier to Buyer shall be subject to the exclusive jurisdiction of any state or federal court situated in Cuyahoga County, Ohio.

10. **Indemnification.** Buyer shall indemnify Supplier from any and all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of the use, storage, sale, processing or other disposition of the goods, Product, supplies or materials used in connection with the Product.

11. **Entire Agreement.** These terms and conditions shall constitute the sole and exclusive agreement between Buyer and Supplier related to any order, and the same may not be altered, amended, modified or rescinded except by a writing signed by the Buyer and Supplier. The supply of Product by Supplier shall be provided only on these terms and condition; and no other terms or conditions shall be accepted unless specifically agreed to in writing by Supplier. No waiver of a breach of any provision hereof shall constitute a waiver of any other breach or of such provision. In the event that any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions of these terms and conditions which shall remain in full force and effect.