

TERMS AND CONDITIONS

1. **DEFINITIONS:** Seller means Watry Industries, LLC. having its principal place of business at 3312 Lakeshore Drive, Sheboygan, Wisconsin 53081. Instrument means this document consisting of the front side or preceding of this form and these terms and conditions. Product shall mean the product(s) identified above in this Instrument, including the labor and materials of Seller thereto. Customer shall mean the customer identified above in this Instrument.
2. **DELIVERIES:** Deliveries shall be subject to and contingent on, strikes, labor difficulties, riots, civil unrest, fires, floods, differences with workmen, accidents to machinery, acts of God, delay or defaults of common carriers, failure or curtailment of Seller's usual sources of supply, governmental decrees or orders, or other causes beyond Seller's control: and Seller shall not be liable for any loss or damage arising therefrom. In the event such causes are material, Seller may cancel this contract or any part thereof without any resulting liability. Deliveries made within twenty (20) working days after any specified date of delivery shall constitute a good delivery unless delivery is expressly made time of the essence. Any delivery not in dispute shall be paid for regardless of any other controversies relating to other delivered or undelivered product(s).
3. **LIMITED WARRANTY:** Seller warrants the Product is free from defects in material and workmanship under normal use, and providing that the Product has not been modified or damaged by accident, abuse or otherwise, and this express warranty is in lieu of all other warranties, expressed or implied, by law or otherwise. Claimed defective Product may be returned to Seller only after inspection by Seller and upon receipt of definite shipping instructions from Seller. Product so returned will be replaced, credited or repaired without charge, at Seller's option, but Seller shall not be liable for loss, damage or expense directly or indirectly arising from the use of any Product or from any other cause, Seller's liability being expressly limited to the replacement or repair of defective Product, or credit to Customer of the price paid by Customer to Seller for such defective Product. Every claim on account of defective material or workmanship or for any other cause shall be deemed waived by Customer unless made in writing within sixty (60) calendar days from date of receipt by Customer of the Product to which such claim relates. For purposes of claims of latent defect or inability to discover a defect or for any other reasons which may be alleged to extend the term of this warranty beyond the term of the preceding sentence, the term of this warranty shall absolutely terminate one hundred twenty (120) calendar days after shipment of Product by Seller. This warranty is the only warranty, express or implied, provided by Seller. **ACCORDINGLY ANY OTHER WARRANTIES EXPRESS OR IMPLIED IN FACT OR BY LAW, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES OR INCIDENTAL EXPENSES INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOSS OF USE OR LOSS OF PROFITS, FOR ANY BREACH OF WARRANTY OR FOR NEGLIGENCE OR ANY ARISING FROM THE MANUFACTURE, SALE OR USE OF THE PRODUCT OR THE MANUFACTURE, SALE OR USE OF PRODUCTS MADE FROM OR OUT OF THE PRODUCT; NOR IN ANY EVENT, SHALL SELLER'S LIABILITY FOR DIRECT DAMAGES HEREUNDER IF ANY, EXCEED THE AMOUNT OF PAYMENTS THAT ARE ACTUALLY MADE BY CUSTOMER UNDER THIS AGREEMENT. HOWEVER, SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO CUSTOMER. NO PERSON IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF THE SELLER CONTRARY TO THIS WARRANTY. CUSTOMER'S RIGHTS AS EXPRESSED HEREIN ARE EXCLUSIVE REMEDIES AND SELLER SHALL NOT BE LIABLE FOR DAMAGES OTHER THAN AS EXPRESSLY SET FORTH HEREIN**
4. **EQUIPMENT:** (a) All equipment (including jigs, dies and tools but excluding patterns) which Seller constructs or acquires for use in the production of Product for Customer shall, unless agreed otherwise in writing, be and remain Seller's property. In Seller's possession and control, the charge thereon being paid for engineering services and benefits derived from the use of such equipment, however all such equipment on which the Customer has paid the engineering charge will be used exclusively for the manufacture of the Product of and for such Customer, unless the Customer expressly consents otherwise, and same will be routinely maintained and repaired at our expense. The expense of non-routine maintenance and repair will be the responsibility of the Customer.
(b) Any materials or equipment owned or furnished by Customer while in Seller's possession will be carefully handled and stored by Seller but Seller shall have no responsibility or liability for loss or damage hereto.
(c) When for three (3) consecutive years no orders are received from Customer for Product to be made with any materials or equipment referred to in foregoing subdivision (a) and (b), after giving thirty (30) calendar days written notice to Customer at the last known address, Seller may make such disposition thereof as Seller desires without liability to Customer or any owner of such materials or equipment.
5. **NO WAIVER:** No provision hereof and no breach of any provision shall be deemed waived by reason of any previous waiver of such provision or any breach thereof. Seller's failure to object to provisions contained in any communication or order from Customer shall not be deemed a waiver of the provisions of this instrument.
6. **CONTROLLING PROVISIONS:** This instrument and its terms and conditions supersedes any contrary provisions, terms, conditions, agreements, understandings or communications, whether verbal or written. These terms and conditions together with Seller's proposal and acknowledgement not inconsistent herewith shall constitute the entire contract between Seller and Customer related to the Product. This is not an acceptance of Customer's purchase order or subject to the Customer's delivery order, confirmation order, shipping schedule or other form, instrument or document of Customer and such shall not be a part of the agreement between the parties unless the terms and conditions thereof do not differ from those contained herein, and if they do differ then Customer agrees that any and all additional, deleted and/or different terms and conditions herein contained shall govern unless "notification of objection" thereto, in writing is received by Seller within seven (7) calendar days after the date of this instrument.
7. **ACCEPTANCE:** This Instrument constitutes Seller's offer to Customer and shall become a binding contract upon the terms and conditions set forth herein when accepted by Customer. Acceptance of this Instrument by Customer will be deemed to occur either by Customer sending or otherwise communicating in writing or otherwise an acceptance to Seller confirming this transaction, or by receipt of Product by Customer whichever occurs first. By so accepting this Instrument Customer agrees to and accepts said terms and conditions.
8. **FORUM:** This Instrument is executed and delivered in the State of Wisconsin. Should any disputes arise between Seller and Customer, it is agreed that Wisconsin law shall apply to the interpretation and meaning of this Instrument and the agreement between the parties, and further that Wisconsin courts shall be the only forum for such disputes. Each party hereby consents to and submits to this exercise of jurisdiction over its person by the appropriate Wisconsin court having jurisdiction.
9. **COMPLIANCE:** Seller may at any time insist upon strict compliance with these terms and conditions, notwithstanding previous custom, practice or course of dealings to the contrary.
10. **SPECIAL CONDITIONS:** Customer shall not circulate nor advertise this instrument without express written permission from Seller.
11. **TAXES:** Present or future sales, revenue, excise or other taxes applicable to Product shall be added to the purchase price and shall be paid by Customer, or in lieu thereof Customer shall timely provide Seller with an acceptable tax exemption certificate.
12. **INDEMNIFICATION:** Customer agrees to defend, hold harmless and indemnify Seller against all claims, lawsuits and any other liability for injury to persons or damage to property arising out of either Customer's possession or use of the Product, or a transferee of Customer's possession or use of the Product.
13. **CAPTIONS:** Captions preceding particular sections are for convenience only and if the caption is in conflict with the text of the section, the text of the section shall control; and the captions shall not be construed as a limitation of the scope or a modification of a particular section to which they refer.