

**D. J. CONLEY ASSOCIATES INC.
TERMS AND CONDITIONS OF SALE**

1. **Offer.** These Terms and Conditions apply to all equipment, goods and/or services ("Products") sold and/or performed by D. J. Conley Associates Inc. ("Seller") and are incorporated into each and every proposal ("Proposal") issued by Seller. The Proposal constitutes Seller's offer to the customer identified in the Proposal ("Buyer") to sell and/or perform the Products identified in the Proposal and otherwise to enter into the agreement the Proposal describes, and the Proposal shall be the complete and exclusive statement of such offer and agreement.

2. **Acceptance.** A contract is formed when Buyer accepts the Proposal by written acknowledgement, by the issuance to Seller of a purchase order or other acceptance document for the Products, or by accepting Products. Acceptance is expressly limited to these Terms and Conditions and the terms and conditions expressly referenced on the face of the Proposal. Notwithstanding any contrary provision in Buyer's purchase order or other acceptance document, delivery of Products or commencement of production by Seller shall not constitute acceptance of Buyer's terms and conditions to the extent any such terms or conditions are inconsistent with or in addition to the terms and conditions contained in the Proposal.

3. **Adjustments.** Seller reserves the right to equitably adjust the price and delivery terms of the Proposal in the event of, and as a condition to, any changes in the specifications or other requirements for Products.

4. **Shipping and Delivery.** All sales of Products are F.O.B. Seller's, and/or the manufacturer's location unless otherwise specified in the Proposal. Responsibility of Seller shall cease upon delivery to and receipt of the Products by the transporting carrier at which point Buyer will bear all risk of loss for the Products. Premium shipping expenses and/or other related expenses necessary to meet Buyer's accelerated delivery schedules shall be the responsibility of Buyer. Deliveries of orders placed by Buyer may be changed, deferred or canceled only upon specific agreement in writing by Seller and Seller may condition such agreement upon Buyer's assumption of liability and payment to Seller for: (a) a sum equal to the costs of work in process including costs accrued for labor and material; (b) any amount for which Seller is liable by reason of commitments made by Seller to its suppliers; and (c) any other loss, cost or expense of Seller as a result of such change, deferment or cancellation. Without limiting the foregoing, in the event delivery of Products is delayed by more than six (6) months of the date the Proposal is issued for any reasons not attributable to Seller, the prices set forth in the Proposal shall increase by one percent (1%) for each thirty (30) days or fraction thereof that shipment is delayed beyond such six (6) month period.

5. **Inspection and Acceptance.** All Products shall be deemed finally inspected and accepted by Buyer within ten (10) days after receipt thereof unless notice of a claim is given in writing to Seller within such time period.

6. **Payment Terms.** Unless otherwise expressly stated in the Proposal, all accounts are payable in U.S. currency thirty (30) days from the date of Seller's invoice. Credit and delivery of Products shall be subject to Seller's approval. In the event Buyer defaults under its payment obligations or Seller otherwise reasonably doubts Buyer's ability to timely meet its payment obligations for any reason, Seller may, without notice, cancel all credit available to Buyer, require that any invoices outstanding be immediately due and payable in full, and refuse to make any further credit advances. Interest, at the maximum legal rate, shall be applied to all past-due amounts incurred in connection with the Proposal. Buyer is prohibited from and shall not setoff against or recoup from any invoiced amounts due or to become due from Buyer or its affiliates any amounts due or to become due to Seller or its affiliates, whether arising under the Proposal, any related purchase order or under any other agreement.

7. **Prices.** Unless otherwise expressly stated in the Proposal, prices for Products specified in the Proposal do not include storage, handling, packaging or transportation charges or any applicable federal, state, local or foreign duties or taxes. Seller reserves the right to increase Product prices in the event of increases in its raw material or component costs or other costs or expenses arising after the date of the Proposal. No price reductions shall apply unless specifically agreed to in writing by Seller.

8. **Warranty.** Seller warrants that, at the time of delivery to Buyer and for twelve (12) months thereafter, the Products will be free from defects in material and workmanship and will conform to the specifications and forms that are a part of the Proposal. If Seller did not install the Products, the foregoing warranty shall only apply to the extent the Products were installed in strict accordance with all applicable manufacturers' instructions, all applicable code requirements and all other applicable laws, rules, regulations and ordinances. Seller shall provide the labor required in connection with the foregoing warranty, and shall coordinate with the manufacturers of the Equipment, if applicable, to obtain any parts required in connection with the foregoing warranty to the extent such parts are covered by such manufacturers' warranties. Unless otherwise set forth in the Proposal, Buyer shall be responsible for the costs of any parts that are not covered by such manufacturers' warranties. Claims of any breach of warranty must be made by written notice to Seller's home office within ten (10) days of Buyer's initial discovery of the purported breach. Subject to the foregoing, Seller, at its election, will make an allowance, repair, or replace (BUT NOT INSTALL), at Seller's designated location, such quantity of the Products as shall prove to be defective. Buyer shall hold and make available for inspection and testing by Seller all Products claimed by Buyer to be defective. Any claim for defective material or workmanship must be verified by Seller and, in such a case, Seller's liability shall be limited to the replacement or repair, at Seller's election, of such part of the Product in question as Seller may determine is defective after receipt by Seller of full payment by Buyer of the purchase price for such Products.

THE FOREGOING WARRANTIES, AND ANY ADDITIONAL OR EXTENDED WARRANTIES EXPRESSLY SET FORTH IN THE PROPOSAL, ARE EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SPECIFICALLY, BUT NOT BY WAY OF LIMITATION, DISCLAIMS ANY AND ALL LIABILITY FOR THE USE OR PERFORMANCE OF THE PRODUCTS IN THE APPLICATION(S) SELECTED BY BUYER AND BUYER'S CUSTOMERS. SELLER FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR (A) PRODUCTS THAT ARE FURTHER PROCESSED BY BUYER OR ANY THIRD PARTY OR IN ANY WAY CHANGED BY BUYER OR ANY THIRD PARTY FROM THE PRODUCTS DELIVERED BY SELLER; (B) ORDINARY WEAR AND TEAR; OR (C) DAMAGED CAUSED BY ACCIDENT, THE ELEMENT, ABUSE, MISUSE, OVERLOADING, OR BY JOBSITE CONDITIONS.

9. **Termination.** In the event that either party fails to perform any of its obligations stated in the Proposal or any related purchase order and fails to cure such breach within ten (10) days after receipt of written notice from the other party specifying such breach, the non-breaching party may at its option immediately terminate the Proposal and/or any related purchase orders. Upon any such termination by either party: (a) Seller shall be relieved of any further obligation to Buyer (including, without limitation, any obligation with respect to production, delivery or transition of supply); (b) Buyer shall be liable to Seller for the immediate payment of amounts then billed to date by Seller to Buyer; (c) Buyer shall purchase and pay Seller immediately for all raw materials, components, work in process and finished goods acquired or produced by Seller in connection with the Proposal and/or any related purchase orders; and (d) Buyer shall immediately reimburse Seller for all other loss, cost or expense of Seller as a result of the termination of the Proposal or any related purchase order (including, without limitation, reasonable overhead expenses). Except for the foregoing, no Proposal is subject to cancellation or change by Buyer in any respect without Seller's express prior written consent.

If performance by Seller of the Proposal is prohibited or restricted by any governmental entity or agency, or by laws, rules or regulations of any governmental entity or agency, Seller may terminate the Proposal without liability to Buyer. Seller may also terminate the Proposal without liability to Buyer in the event any manufacturer or distributor of Products specified in

the Proposal prevents Buyer from providing any or all of such Products for any reason, or otherwise is does not make such Products available to Seller for use in connection with the Proposal.

10. Liability Limitation. Buyer's sole and exclusive remedies against Seller for a breach of any warranties set forth herein and/or in the Proposal are as set forth in Section 8. Specific performance shall not be available to Buyer as a remedy in connection with Seller's providing of the Products. Monetary damages against Seller shall be limited to the dollar amount charged to Buyer for the most recent order placed by Buyer and accepted by Seller for any of the Products alleged to be the cause of any loss or damage, whether founded in contract, tort (including negligence), strict liability or otherwise, arising out of, or resulting from: (a) any order placed by Buyer and accepted by Seller or Seller's performance or breach; or (b) the design, manufacture, delivery, sale, repair, replacement or use of any such Products. In no event shall Seller have any liability whatsoever for any failure, loss, damage or destruction of Products which is due to the condition or state of the Products, known or unknown, as they existed prior to the commencement of Seller's work. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL) ARISING OUT OF OR RELATING TO THE PROPOSAL, ANY RELATED PURCHASE ORDER, OR THE PRODUCTS, REGARDLESS OF ANY ADVICE OR RECOMMENDATIONS THAT MAY HAVE BEEN RENDERED CONCERNING THE PURCHASE, INSTALLATION OR USE OF THE PRODUCTS OR ANY SPARE OR REPLACEMENT PARTS. ANY AGREEMENT VARYING OR EXTENDING THE REMEDIES SPECIFICALLY STATED HEREIN WILL BE BINDING ON SELLER ONLY WHEN SPECIFICALLY AGREED TO IN WRITING BY SELLER.

11. Proprietary Materials. As between Buyer and Seller, Seller owns and shall retain all rights, title and interest, including all intellectual property rights, in and to all Products and associated materials, including, without limitation, all related reports, specifications, designs and any other property, tangible or intangible, furnished, used, or created by Seller in connection with or under the Proposal or any related purchase order ("Proprietary Materials"). No Proprietary Materials created by Seller in connection with or pursuant to the Proposal or any related purchase order shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act. In addition, nothing herein or in the Proposal shall be construed to grant a license to, or transfer any ownership rights in, any Proprietary Materials to Buyer.

12. Confidentiality. Buyer shall maintain the confidentiality of all technical, business or financial information of Seller, its suppliers and/or customers, including, without limitation, the pricing information contained in the Proposal ("Confidential Information"), in the same manner in which it protects its own confidential information of like kind, but in no event shall Buyer take less than reasonable precautions to prevent the unauthorized disclosure, publication, dissemination or use of the Confidential Information. Upon termination of the Proposal and all related purchase orders, Buyer shall return the Confidential Information and shall not use the Confidential Information for its own, or any third party's, benefit.

13. Assignment. The Proposal and/or all related purchase orders shall not be assigned in whole or in part by Buyer without Seller's prior written consent, and any purported assignment or transfer absent such consent shall be void.

14. Export and Import Licenses. Buyer shall be solely responsible for required compliance with the export and import laws of the United States of America and those of any other jurisdiction or country that may be applicable. Seller has no obligation to furnish or obtain any export or import license or similar authorization and is not in any way responsible for the issuance or continuance in force of any such license or authorization.

15. Excusable Delay. Seller shall not be liable for any delay or failure to perform if such delay or failure to perform is caused by circumstances beyond its reasonable control, including without limitation acts of God or public authority, riots or other public disturbances, labor disputes of any kind, power failures, failure of Buyer to provide required information, failure of Buyer to provide adequate containers, or the change in cost or availability of raw materials, components or services based on market conditions, supplier

actions or contract disputes. During any such delay or failure to perform by Seller, Seller's obligations under the Proposal and any related purchase order shall be suspended and Seller shall not have any obligation to provide Buyer with Products from other sources or to pay or reimburse Buyer for any additional costs to Buyer of obtaining substitute Products. Seller may, during any period of shortage due to any of the above circumstances allocate its available supply of Products among itself and its customers in any manner that Seller deems fair and reasonable in its sole discretion.

In the event Seller's performance is delayed or interrupted at the jobsite by Buyer or other third parties, Buyer shall reimburse Seller for any amounts paid to Seller's employees at Seller's normal billing rates, provided that Seller shall use commercially reasonable efforts to fill any employee downtime with other necessary activities or other jobs.

16. Security Interest. Buyer hereby grants to Seller a security interest in all Products and all attachments, replacements and proceeds thereof or related thereto, to secure Buyer's performance of its obligations hereunder and under the Proposal. Seller shall have, upon a default in payment or performance, or upon Buyer's bankruptcy or insolvency, all of the rights and remedies of a secured creditor under the Uniform Commercial Code, including the right to immediate possession of the Products. Such rights and remedies shall be in addition to any other rights and remedies available to Seller hereunder or under applicable law. Buyer shall execute and deliver, upon Seller's request, financing statements to protect Seller's security interest, and the parties agree that all Products shall be considered personal property, regardless of the manner in which they may be affixed to real estate.

17. Accessories and Safety Devices. Seller is only responsible for furnishing accessories and safety devices expressly specified in the Proposal. It is the responsibility of Buyer to furnish such accessories and safety devices that Buyer desires and/or that are required by OSHA standards or other laws, rules, regulations and ordinances governing Buyer's use of any Products. Buyer is responsible for operating all Products in accordance with all code requirements and all other applicable laws, rules, regulations and ordinances.

18. Operating Instructions. Buyer shall ensure that the Products are maintained and operated in strict accordance with all manufacturer's written instructions. Buyer shall defend, indemnify and hold Seller harmless from any and all damages, demands, suits, causes of action and other claims (including reasonable attorney's fees) arising directly or indirectly out of Buyer's failure to comply with the requirements of this Section.

19. Waiver. Waiver by Seller of any of the terms or conditions of the Proposal shall be effective only if in writing and signed by Seller, and shall not constitute a waiver of such terms as to any subsequent events or conditions, whether similar or dissimilar. No course of dealing or custom in the trade shall constitute a modification or waiver by Seller of any right.

20. Survival. These Terms and Conditions shall survive and continue in full force and effect following the expiration, cancellation or termination of a Proposal and any related purchase order.

21. Entire Agreement. The Proposal, including these Terms and Conditions and any other attachments, exhibits or supplements specifically referenced in the Proposal, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in the Proposal and supersedes all prior oral or written representations and agreements. Except as otherwise provided in these Terms and Conditions, the Proposal may only be modified by a written agreement signed by Seller.

22. Applicable Law; Dispute Resolution. Each Proposal shall be governed exclusively by the laws of the State of Michigan without any regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Products is expressly excluded. The parties agree that any litigation arising between the parties in relation to a Proposal and/or any Products shall be initiated and maintained in the Circuit Court of the County of Oakland, Michigan, or the U.S. District Court for the Eastern District of Michigan, Southern Division, and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts. In the event Seller is obligated to enforce the terms of the Proposal or these Terms and Conditions and Seller is successful in such proceedings, Seller shall be permitted to recover its costs incurred in connection with the proceedings, including reasonable attorney's fees.