

Clark-Reliance Corporation

1. **TERMS AND CONDITIONS:** These Terms and Conditions, together with the Purchase Order received by SELLER (collectively, the "Purchase Agreement") contain the entire agreement between the parties pertaining to the purchase by BUYER and the goods set forth in the Purchase Order.

2. **PRICES, TERMS OF PAYMENT:** The prices and terms of payment stated on the Purchase Order apply to all shipments made or services rendered hereunder. BUYER shall have no obligation to honor invoices for goods or services at any increased price unless such increase shall have been confirmed in writing by BUYER. No charges of any kind not stated on the Purchase Order hereof, including without limitation charges for packing, crating or containers, will be allowed unless specifically agreed to by BUYER in writing but damage to any goods because of packing which fails to protect such goods will be charged to SELLER. This order must not be filled at higher prices than last quoted or charged without notice at time of acknowledgement nor at prices higher than those charged other purchasers of the same class.

3. **CONDITIONS OF PAYMENT:** Payment of goods or services covered by this purchase order will be made in accordance with the following terms: Payment date will be computed from the date of receipt of material or service. Actual receipt will be the determining factor in the calculation of cash discounts and the scheduling of payment of net invoices. Unless an earlier date is supported by evidence of shipment as a part of the invoice, our receiving date will be used to establish time of payment.

4. **TAXES:** Any applicable federal, state and local taxes shall be stated separately on SELLER's invoice. The prices stated herein do not, nor will any invoice of SELLER, include any tax with respect to which an exemption is available or is indicated by BUYER to be available, or any federal excise or other tax with respect to which BUYER has furnished SELLER evidence of a lawful exemption. In case it shall ever be determined that any tax, whether separately stated on SELLER's invoice and paid by BUYER or included in the price charged by SELLER was not required to be paid by SELLER, SELLER agrees to notify BUYER and promptly take all steps necessary to obtain a refund, and when received, to pay such refund, including interest, if any, to BUYER.

5. **DELIVERY:** The terms of delivery are as stated on the Purchase Order. Separate invoices for each shipment shall be mailed to BUYER at 16633 Foltz Parkway, Strongsville Ohio 44149, together with one copy of the bill of lading and the packing list. A duplicate bill of lading and packing list shall be forwarded with each shipment. The obligation of SELLER to meet the delivery dates, specifications and quantities (the "Schedule"), as set forth herein, is of the essence to the Purchase Agreement. Deliveries are to be made both in quantities and at times specified herein, or if no such quantities or times are specified, pursuant to BUYER's written instruction. Shipments in greater or lesser quantity than ordered may be returned at SELLER's expense, unless written authorization is issued by BUYER. If SELLER's deliveries fail to meet the Schedule, without limiting its other rights or remedies, BUYER may either direct expedited routing and charge excess cost incurred thereby to SELLER or cancel all or part of the Purchase Order in accordance with the default provisions hereof. Goods which are delivered in advance of schedule are delivered at the risk of SELLER and may, at

BUYER's options, be returned at SELLER's expense for proper delivery and/or have payment therefore withheld by BUYER until the date that the goods are actually scheduled for delivery.

6. **EXCUSABLE DELAY FOR NON-PERFORMANCE:** It shall not be deemed a default hereunder and neither BUYER nor SELLER shall be liable for a failure to perform hereunder arising from causes or events beyond the reasonable control and without the fault or negligence of BUYER or SELLER, including but not limited to, labor disputes of any kind. To the extent that, and so long as, the obligations of either party are affected by any such cause or event, such obligations shall be suspended, provided, however, that time is of the essence of the Purchase Order and should SELLER fail to comply with BUYER's delivery schedule or otherwise fail to comply with its obligations hereunder, BUYER may terminate the Purchase Order without liability.

7. **INSPECTION:** All goods provided hereunder shall be subject to inspection and testing at the point of destination, notwithstanding prior payment therefore by BUYER. If any of the goods are defective or otherwise not in conformity with the requirements of the Purchase Order or BUYER's designs, BUYER, in addition to its other rights, may reject the same for full credit or may rework the same at SELLER's expense or may require prompt correction or replacement thereof by SELLER at SELLER's expense. Any goods rejected by BUYER shall be at SELLER's risk and expense and shall not thereafter be tendered for acceptance without BUYER's written consent. The packaging and handling expense incidental thereto and the applicable transportation costs or charges will be charged to SELLER's account. Nothing herein shall released SELLER from the obligation to make full and adequate testing and inspection of goods sold hereunder. The SELLER's manufacturing plant or such part of any manufacturing plant as may be engaged in manufacturing or furnishing the product, together with cost records or orders placed on a time and material basis, shall, with reasonable notice be subject to inspection by BUYER.

8. **PROPERTY:** All tools, dies, patterns, drawings or other equipment furnished by BUYER shall continue to be BUYER's property and subject to BUYER's disposition at any time; shall be held by SELLER at its risk and replaced by SELLER if lost or destroyed and shall be used exclusively in the preparation of products ordered by us.

9. **CONFIDENTIALITY OF INFORMATION:** SELLER shall not, without first obtaining our written consent, in any manner advertise, publish, communicate or otherwise divulge the fact that the SELLER has contracted to furnish the product to BUYER. SELLER shall be responsible in matters within its control for the safe guarding of all information that is non-public, confidential or proprietary in nature regarding BUYER and the use and/or application of BUYER's products that is disclosed or developed in connection with the work under this contract. BUYER shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach or threatened breach of this Section 9 by SELLER. Such remedies shall not be deemed to be the exclusive remedies of BUYER, but shall be in addition to all other remedies available at law or in equity.

10. **WARRANTY:** SELLER expressly warrants that all goods and services ordered or provided hereunder shall conform in all aspects to any specification drawings, samples and other descriptions furnished to or by BUYER and will be merchantable and free from any defects in material, design or workmanship. If BUYER has furnished performance requirements for the goods purchased hereunder, SELLER further warrants that such goods shall be fit and sufficient for the purposes for which

BUYER intends them, in addition to any other remedies BUYER may have. BUYER may reject goods not conforming to the foregoing warranties whether or not such goods shall have been previously accepted by BUYER, or any prior payments have been made thereon SELLER further warrants that no law, rule, regulation, ordinance or Executive Order of the United States, a state or local government, or any other governmental agency, including without limitation, all laws, rules, regulations, ordinances and orders relative to price, price discrimination, wages and hours including the Fair Labor Standards Act of 1938, as amended, safety and compensation, have been violated in the manufacture or sale of the goods or in the performance of the services covered by the Purchase Order. SELLER agrees that the foregoing warranties shall survive delivery of acceptance of, and payment for the goods, materials or services provided hereunder and shall inure to the benefit of BUYER and its customers.

11. **INDEMNIFICATION:** SELLER agrees to indemnify and save harmless BUYER from and against all losses, liabilities, judgments, settlements, expenses including, without limitation, attorney's fees or claims based on injuries or damages to any person or property arising out of or in any way related to (a) the Purchase Agreement, (b) the breach of any obligation or warranty hereunder, or (c) the delivery, condition, use or operation of the goods or services purchased hereunder, whether such goods are in the same mode as when delivered hereunder or whether they have been used in the manufacture of, and become part of, equipment, machinery or goods sold by BUYER to third parties, and SELLER agrees to and shall assume on behalf of BUYER, upon its demand (without regard to the real or apparent merits of said action), the defense of any court or agency actions which may be brought against BUYER.

12. **INTELLECTUAL PROPERTY:** SELLER warrants that the goods specified herein and their sale or use alone, or in combination according to SELLER's specifications or recommendations, if any, will not infringe any United States or foreign patent, copyright or trademark. In case the goods constitute patent, copyright or trademark infringement and their use is enjoined, BUYER may, at its sole option, pursue any remedy or remedies available at law or in equity, including, without limitation, requiring SELLER to either procure for BUYER the right to continue using such goods, modify them so they become non-infringing or remove them and refund the total purchase price thereof.

13. **PATENT LICENSE:** SELLER, as part consideration for the Purchase Order and without further cost to BUYER, hereby grants BUYER an irrevocable, non-exclusive, royalty free right and license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with SELLER's performance of the Purchase Order, and SELLER hereby grants to BUYER a license to repair, rebuild or relocated and to have repaired, rebuilt or relocated the goods purchased by BUYER under the Purchase Order.

14. **CHANGES:** BUYER may at any time, by written notice, make changes in the terms of the Purchase Order or the goods or services provided hereunder and SELLER shall comply therewith. If any such change causes an increase or decrease in the cost of or time required for performance of SELLER's obligation pursuant to the Purchase Order, an equitable adjustment shall be made in the price or delivery schedule or both, and the Purchase Order shall be modified in writing accordingly. Any claim by SELLER for adjustment under this clause must be asserted within ninety (90) days from the date of receipt by SELLER of the notification of change.

15. **ASSIGNMENTS:** No right or obligation under the Purchase Order, including the right to receive monies due or to become due hereunder, shall be assigned by SELLER without the prior written consent of BUYER and any purported assignment without such consent shall be void. SELLER shall not subcontract or in any manner delegate to any other party the performance of any work or the supplying of any services under the Purchase Order without the prior written approval of BUYER.

16. **SUBSTITUTIONS; EXTRAS:** No substitution of materials or accessories may be made without BUYER's written consent. No charges for extras will be allowed unless such extras have been ordered in writing by BUYER and the price agreed upon.

17. **INSURANCE; INDEMNITY AND INSURANCE IN CONNECTION WITH WORK DONE FOR BUYER OR BUYER'S CUSTOMERS:** SELLER shall procure and maintain at all times adequate insurance against fire and other casualties covering all tools, fixtures, and material supplied by BUYER TO SELLER and SELLER's insurance shall include a clause providing that loss, if any, shall be payable to SELLER and BUYER as their interests may appear. When work of any description is performed in furtherance of SELLER's obligations under the Purchase Order on the premises of BUYER or any of BUYER's customers, SELLER agrees that such services are to be rendered by SELLER as an independent contractor, and SELLER shall provide all safeguards and take all necessary precautions to prevent the occurrence of any accident, injury, death or loss to any person or property and shall be solely responsible therefore. SELLER will indemnify and hold BUYER and BUYER's customers harmless from and against any and all claims, losses, damages, liabilities, fines and expenses arising out of or in any way related to the performance of the Purchase Order and the contract based thereon, except to the extent caused by the negligence of BUYER, its employees, agents, indemnities and other independent contractors.

18. **GRATUITIES:** SELLER has not and will not offer or give to any employees, agent or representative of BUYER any gratuity with a view toward securing any business from BUYER by influencing such person with respect to the terms, conditions or performance of any contract with or order from BUYER. Any breach of this warranty shall be a material breach of each and every contract between BUYER and SELLER.

19. **DEFAULT:** In the event SELLER is insolvent or makes a general assignment for the benefit of creditors or admits in writing its inability to pay debts as they mature or if a trustee or receiver of SELLER or of any substantial part of the SELLER's assets is appointed by any court or if a proceeding is instituted under any provision of the Federal Bankruptcy Act or any state insolvency law or by or against SELLER and is acquiesced in or is not dismissed within (30) days or results in an adjudication in bankruptcy or insolvency or if SELLER fails, or appears to be unable, to perform any of its obligations in accordance with the terms and conditions of the Purchase Order, BUYER may cancel the Purchase Order in whole or in part and/or pursue any further remedies available at law or in equity. No waiver by BUYER of a breach by SELLER of any provision of the Purchase Order shall constitute a waiver of any other breach of such provision. All of BUYER's rights and remedies hereunder shall be cumulative and not exclusive.

20. **LIMITATION OF BUYER'S LIABILITY, STATUTE OF LIMITATIONS:** IN NO EVENT SHALL BUYER BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, BUYER'S liability on any claim of any kind for any loss or damage arising out of, connected with resulting from the Purchase Order or the contract based thereon, or from the performance or break thereof, shall in no case exceed the price allocable to the goods or services or unit thereof which give rise to the claim. BUYER shall not be liable for penalties of any description. Any action resulting from any breach on the part of BUYER as to the goods or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

21. **CANCELLATION:** An addition to any other provisions contained herein for the cancellation or termination of the Purchase Order, BUYER may cancel the Purchase Order, for any reason or no reason, in whole or in part, by written notice to SELLER on the condition that BUYER pay to SELLER the actual net cost to SELLER incurred in good faith prior to SELLER's receipt of the cancellation notice in connection with this Purchase Order, provided, however, that in no event shall BUYER be liable for SELLER's commitments or production arrangements in excess of the amount, or in advance of that time, necessary to meet BUYER's delivery schedule.

22. **MISCELLANEOUS:** This Purchase Order, as the same may be amended or modified in writing, and any document referred to herein supersede all prior understandings, transaction and communications, or writings with respect to the matters referred to herein. When seller has not expressly accepted this order, Seller, by commencing work hereunder, shall be deemed to have agreed to all the provisions hereof.

23. **CHOICE OF LAW:** The Purchase Order and the contract based thereon shall be governed by the laws of the State of Ohio.

SHIPPING AND BILLING INSTRUCTIONS

A. All material shall be suitably packed, marked and shipped in accordance with requirements of common carriers in a manner to secure lowest transportation cost, and no additional charge shall be made to BUYER therefore unless previously agreed upon.

B. No charge shall be made by SELLER for cartage or packing.

C. BUYER's complete order number and item number must appear on all invoices, shipping notices, packing slips and containers

D. Invoicing must be rendered in the same month *but not before* shipment is made to BUYER.

E. Bill of Lading or other shipping materials must be mailed to BUYER the same day that shipment is made.

F. SELLER must use Clark Reliance Routing Guide

G. Receiving hours are 7 am to 1 pm on scheduled work Days.