

MacArthur Co. Terms and Conditions

- 1. Terms:** This credit / account set up application shall constitute only an offer and application by Buyer until accepted and countersigned by an authorized agent of MacArthur Co. ("Seller"). The validity of this agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and construed pursuant to and in accordance with the laws of the state wherein the MacArthur Co. branch is located with which the Buyer has applied for open account credit. In the event of the commencement of legal action regarding the interpretation or enforcement of any of the terms or provisions of the agreement, or any legal action arising from the agreement and the relationship of the parties, said action shall be commenced in the county and state wherein the MacArthur Co. branch is located with which the Buyer has applied for open account credit or at a location at the discretion of MacArthur Co. MacArthur Co.'s terms of sale are Net 30 days from date of invoice, unless otherwise indicated on the face of the invoice. Finance charge of 3% over prime (as prime is determined by MacArthur Co. in its sole and absolute discretion) annually will be charged on all invoices over 30 days past due. The application or collection of such charge is an additional consideration to the sale by Seller to Buyer and does not give the Buyer any right to extend Buyer's payment beyond the due date nor does the application or collection of such charges amount to a forbearance by Seller of Seller's rights to collect any and all over due amounts or otherwise exercise its rights and remedies under this MacArthur Co. Account Application and Information Sheet and MacArthur Co. Terms and Conditions (collectively, the "Agreement") or applicable law, and if Seller undertakes collection of such amounts by suit or otherwise, Buyer agrees to and shall pay said finance charges as well as any reasonable attorney's fees and costs and expenses of collection including any collection agency fee (including any collection fee based on a percentage of the debt). If the charge on delinquent payment should be held to be unlawful or unenforceable; the charge shall be made at the highest rate of interest allowed by written contract in the state wherein the MacArthur Co. branch is located with which the Buyer has applied for open account credit, or ten percent (10%) per annum, whichever is higher.
- 2. Security Interest:** Buyer hereby grants to Seller a security interest in and to the goods sold hereunder, and to all inventory, assets, accounts receivable, equipment, tools, fixtures and other personal property of Buyer, and the proceeds or products of any of the foregoing (all of the foregoing is collectively hereafter referred to as the "Collateral"). The security interest hereby created shall attach immediately on execution of this Agreement by Buyer, and shall secure the payment, according to its terms, of the foregoing agreement between Buyer and Seller. Until the final termination of this Agreement, Buyer at Buyer's own cost and expense, shall keep the Collateral, and all parts of the Collateral, insured for the full amount secured by the Agreement against damage or loss resulting from any and all risks to which it might foreseeably be exposed and risks designated by Seller. Each such policy of insurance shall be issued by an insurance company acceptable to Seller and shall provide for the loss payable under it being paid to both Buyer and Seller as their interests may appear. Buyer shall pay from its own funds, as they become due, all taxes and assessments levied or assessed against the Collateral, or any part of the Collateral, prior to the final termination of this agreement. Buyer shall keep the Collateral separate and identifiable from other property owned by Buyer or located on the same premises as Collateral and Buyer shall not, without the prior written consent of Seller, sell, lease or otherwise dispose of any portion of the Collateral until all amounts secured by the security interest created by this Agreement have been fully and finally paid. Seller, either in person or by agent, shall have the right at any and all reasonable times and at reasonable intervals to enter the premises where the Collateral is located and inspect the Collateral. Seller may at its option, but may not be required to, pay on behalf of Borrower and on the account of Buyer any taxes, assessments, liens, insurance premiums, repair costs or maintenance costs that pursuant to the terms of this Agreement should have been but were not paid by Buyer. Seller shall also have the rights, at its option, to enter the premises where the Collateral or any part of the Collateral is located, and cause to be performed as agent and on the account of Buyer any such acts as it may deem necessary for the proper repair or maintenance of the Collateral or any part of the Collateral. Any moneys expended or expenses incurred by Seller under this paragraph shall also be secured by the security interest created by this Agreement and shall be due and payable by Buyer to Seller, together with interest at the rate allowed by law, on demand. Seller may assign his rights under this Agreement and the security interest created by this Agreement, and Seller's assignee shall be entitled, on written notice of the assignment being given by Secured Party to Borrower to all performance required of Buyer by this Agreement. Should Buyer fail to perform any provision of this Agreement to be performed on its part, or should Buyer fail to pay any obligation secured by this Agreement or the secured interest created by this agreement as it becomes due, then Buyer shall be in default of this Agreement under Article 9 of the Uniform Commercial Code for the state in which the branch is located with whom the Buyer is doing business (hereinafter, the "UCC"). In such event, Seller shall have all the rights and remedies afforded a secured party by the chapter on Default of Article 9 of the UCC on the date of this Agreement and may, in connection therewith also: (a) Enter on Buyer's premises to assemble and take possession of the Collateral; (b) Require Buyer to assemble the Collateral and make its possession available to Seller at a place designated by Seller that is reasonably convenient to both Buyer and Seller; (c) Enter Buyer's premises, render the Collateral, if equipment, unusable and dispose of it in the manner provided by the UCC on Buyer's premises; (d) Apply the proceeds received from the sale or other disposition of the Collateral or default of Buyer in addition to the items specified in Article 9 of the UCC to the payment of reasonable attorneys' fees and legal expenses incurred by Seller as a result of Buyer's default. Concurrently with the execution of this Agreement or at any reasonable time thereafter demanded by Seller the parties hereto, Buyer and Seller, shall execute any UCC-1 Financing Statement or Financing Statements required to perfect the security interest created by the Agreement. Such Financing Statement or Financing Statements shall be on a form or forms approved by the appropriate Secretary of State. Neither the acceptance of any partial or delinquent payment by Seller, nor Seller's failure to exercise any of its rights or remedies on default by Buyer shall be a waiver of the default, a modification of this Agreement or Buyers obligations under this Agreement, or a waiver of any subsequent default by Buyer.
- 3. Risk of Loss:** Risk of loss passes from Seller to Buyer either on delivery by Seller to a carrier or on delivery by Seller to the delivery point specified herein.
- 4. Checking Materials Claims:** Buyer agrees to check materials against shipping papers immediately upon delivery of destination. Claims including shortage claims must be made promptly after delivery, but not later than 30 days. Buyer and Seller must be given a reasonable opportunity to investigate. No material shall be returned to Seller without its written consent. Seller will instruct Buyer as to disposition of rejected material.
- 5. Replacement and Limitation of Remedies:** Subject to paragraph four (4) above, Seller will replace at the delivery point specified herein, any material furnished hereunder, that is found to be defective or otherwise fails to conform to the conditions herein, or warranties expressed herein or implied from this sale, or at Seller's option, Seller will repay or credit to the Buyer's account the price paid for such product, plus transportation charges paid by Buyer, less fees. Material returns will be subject to a restocking fee. Buyer's remedies with respect to the defects or non-conformities specified above shall be limited exclusively to the right of replacement thereof or to the crediting or repayment of the price as provided above, in no event will Seller be liable for incidental or consequential damages or for labor claims.
- 6. Inspection Charges:** Seller shall not be liable for charges for inspection and testing of materials.
- 7. Waiver:** Waiver by Seller or Buyer of any breach of these terms and conditions shall not be construed as a waiver or any other breach of the same or other terms and conditions.
- 8. Modification of Terms:** Purchase orders or other documents passing between Seller and Buyer prior to this document are negotiations and are not part of the terms and conditions of sale and no terms, conditions or express warranties other than those stated herein, and no agreement, oral or written, in any way purporting to modify these terms or conditions, whether contained in Buyer's purchase or shipping form, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller's authorized representative. All proposals, negotiations, and representations, if any, made prior and with reference, hereto are merged herein.
- 9. Freight:** All deliveries made by MacArthur Co. may carry a minimum \$10.00 charge, please confirm amount with your local branch. Other shipments by common carrier will be F.O.B. shipping point with charges prepaid and included on your invoice.
- 10. Representations and Warranties.** By executing this Agreement, Buyer hereby represents and warrants to Seller that: (a) the Buyer is a duly formed and validly existing entity as set forth above, in good standing under the laws of the state of its formation, the Buyer's organizational documents are in full force and effect, and Buyer is qualified to do business in each state where a failure to qualify would have a material adverse effect on Buyer; (b) Buyer has the legal power and right to execute and deliver this Agreement and to perform and observe the provisions hereof; (c) the members, managers, officers, partners, or sole proprietors executing and delivering this Agreement on behalf of Buyer have been duly authorized to do so, and this Agreement, when executed, is legal and binding on Buyer in every respect; (d) the Buyer is not insolvent, as defined in any applicable state or federal statute; (e) the Buyer is not engaged or about to engage in any business or transaction for which the assets retained by Buyer are or will be an unreasonably small amount of capital, taking into consideration the obligations to Seller incurred hereunder; and (f) the Buyer does not intend to, nor does the Buyer believe that the Buyer will, incur debts beyond the Buyer's ability to pay such debts as they become due.
- 11. JURY WAIVER.** THE BUYER, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG SELLER, BUYER, ANY GUARANTOR, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR OTHER AGREEMENT, INSTRUMENT OR DOCUMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED THERETO.
- 12. No Warranties:** No warranties express or implied, representations, promise or statements as to the condition, fitness for purpose or use, or merchantability of the goods sold hereunder have been made by Seller unless expressly set forth in this agreement, or the sales documents. Any statement as to the date of manufacture, or model number or other reference to the goods sold is for the purpose of identification only and is not a representation or warranty.

Signature to the MacArthur Co., Terms and Conditions

Date:

Print Name and Title