

## COB INDUSTRIES, INC. TERMS AND CONDITIONS OF SALE

1. **Offer, Governing Provisions and Cancellation.** This writing constitutes an offer or counter-offer by COB Industries, Inc. ("Seller") to sell the products described herein in accordance with these terms and conditions, is not an acceptance of any offer made by buyer, and is expressly conditioned upon assent to these terms and conditions. Seller objects to any additional or different terms contained in any purchase order or other communication previously or hereafter provided by buyer to Seller. No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing. No order may be cancelled or altered by buyer except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. In the event of such an approved cancellation by buyer, Seller shall be entitled to payment of the full price, less the amount of any expenses saved by Seller by reason of the cancellation.

2. **Prices and Payment.** All prices are subject to change upon notice; and the price of products on order but unshipped will be adjusted to the price in effect at the time of shipment. Payment is due upon buyer's receipt of Seller's invoice, unless Seller requires payment in advance. Interest will be charged at the rate of 18% per year (but not more than the highest rate permitted by applicable law) on accounts more than 30 days past due.

3. **Taxes and Other Charges.** Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and buyer (collectively, "taxes and other charges") shall be paid by buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes and other charges, buyer shall reimburse Seller therefore.

4. **Delivery, Claims and Force Majeure.** Delivery of products to a carrier at Seller's plant or other loading point shall constitute delivery to buyer; and regardless of shipping terms or freight payment, buyer shall bear all risk of loss or damage in transit. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve buyer of its obligations to accept remaining deliveries.

Claims for shortages or other errors in delivery must be made in writing to Seller within 10 days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by buyer. Claims for loss or damage to goods in transit should be made to the carrier and not to Seller.

All delivery dates are approximate. Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including, without limitation, any act of God, act of buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation, or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason shall be rescission of this agreement.

5. **Delayed Shipment.** If the products are not shipped within 15 days after notification to buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including buyer's failure to give shipping instructions, buyer shall pay Seller a fee equal to 10% per annum on the invoice price of the products, as compensation for handling, transportation and storage costs associated with such delay.

6. **Changes.** Seller may at any time make such changes in design and construction of products as Seller deems appropriate, without notice to buyer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

7. **Warranties.** COB Industries, Inc. warrants to the original end-user of this machine, that the machine is free of defects in materials and workmanship, appearing within six (6) months after the date of purchase. If any covered defect is discovered during the warranty period, COB Industries, Inc. will repair or (at its option) replace the affected parts. Such repair or replacement shall be the sole liability of COB Industries, Inc., and the sole remedy of the purchaser, in connection with a defect in this machine, and all shipping and handling charges associated with any such repair or replacement shall be paid by the purchaser.

If during the warranty period, it appears that this machine contains a defect covered by this warranty, contact the dealer from which you purchased the machine.

This warranty does not cover machine failure attributable to anything other than a defect in materials and workmanship, including but not limited to machine failure caused by improper operation or care, improper installation, abuse, misuse, alteration, accident, or damage from improper shipping or servicing. Ordinary wear and tear shall not be deemed a defect in materials or workmanship. No employee, agent, dealer or distributor is authorized to extend or expand the coverage of this warranty.

**THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES. EXCEPT FOR THE WARRANTY PROVIDED ABOVE, COB**

**INDUSTRIES, INC. SPECIFICALLY DISCLAIMS ANY AND ALL OTHER EXPRESS WARRANTIES WITH RESPECT TO THIS MACHINE, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

8. **Patents, Trademarks and Copyrights.** Seller will, at its own expense, defend any suits that may be instituted by anyone against buyer for alleged infringement of any United States patent, trademark or copyright relating to any products manufactured and furnished by Seller hereunder, provided buyer shall have made all payments then due hereunder and shall give Seller immediate notice in writing of any such suit and transmit to Seller immediately upon receipt all processes and papers served upon buyer and permit Seller through its counsel, either in the name of buyer or in the name of Seller, to defend the same and give all needed information, assistance and authority to enable Seller to do so.

Notwithstanding the foregoing, Seller shall not be responsible for any compromise or settlement made without its written consent. The foregoing states the entire liability of Seller for infringement, and in no event shall Seller be liable for consequential damages attributable to an infringement.

As to any products Seller furnishes to buyer manufactured in accordance with drawings, designs or specifications proposed or furnished by buyer, Seller shall not be liable, and buyer shall indemnify Seller and hold Seller harmless from and against any and all loss, liability, damage, claim and expense (including but not limited to Seller's reasonable attorneys' fees and other costs of defense) incurred by Seller as a result of any claim of patent, trademark, copyright or trade secret infringement, or infringement or any other proprietary rights of third parties.

9. **Consequential Damages and Other Liability; Indemnity.** Except as otherwise agreed in writing, Seller's liability with respect to the products sold hereunder shall be limited to the warranty provided in section 7 hereof, and, with respect to other performance of any contract with buyer, shall be limited to the contract price. **SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, cost of capital, cost of substitute products, or for any other types of economic loss, or for claims of buyer's customers or any third party for any such damages. **SELLER SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.**

Buyer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which Seller may incur as a result of any claim by buyer or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence.

10. **Technical Information.** Any sketches, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production techniques revealed thereby, shall be made without the express written consent of Seller.

11. **Brochures.** Any and all brochures, warnings or the like concerning the products supplied hereunder are supplied as an aid to buyer and are not represented to be accurate, complete or sufficient. Buyer will indemnify and hold harmless Seller against all liabilities and expenses (including attorneys' fees) arising out of the use of the products by buyer or a third party in any case where buyer fails to make available adequate warnings and instructions concerning the proper and normal use of the products.

12. **Drop Shipment Charge.** All drop shipments will be assessed a 5% fee.

13. **Returned Goods Policy.** A Returned Goods Authorization ("RGA") number must be assigned by a COB Industries Service Representative *prior to returning any merchandise*. Returned merchandise will be inspected upon receipt. If the merchandise is in acceptable condition, a credit will be issued less a 15% restocking charge. **NO CASH REFUNDS WILL BE GIVEN.** The customer is responsible for all freight charges (collect shipments will not be accepted).

14. **Governing Provisions.** **THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER, AND SHALL BE GOVERNED BY AND SHALL BE CONSTRUED ACCORDING TO THE LAWS OF FLORIDA AND THE U.S. (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THERE ARE NO CONDITIONS AFFECTING THIS AGREEMENT WHICH ARE NOT EXPRESSED HEREIN. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**