

# Cardinal Fastener & Specialty Co., Inc.

## Invoice Terms & Conditions

1. **TERMS OF ACCEPTANCE** – Seller shall not be bound by any of the terms and provisions of any order placed by Buyer which are inconsistent with the terms and provisions hereof and said terms and provisions of Buyer's order shall not be considered applicable to the sale or shipment of the materials mentioned and referred to herein. Unless Buyer has previously notified Seller in writing our original order will be considered correct and complete and acceptance of the terms and conditions thereof and hereof by Buyer shall be indicated and, in the absence of such notification, the sale and shipment by the Seller of the materials covered hereby or the payment by Buyer of any or all of the amount due hereunder, shall be conclusively deemed to have subjected this transaction to the terms and conditions hereof.
2. **TERMS OF PAYMENT** – Unless otherwise specified herein, payment shall be net cash thirty (30) days from date of delivery or completion of services by Seller. To the extent permitted by law a service charge of 2% per month will be imposed on all charges outstanding for over thirty (30) days. Seller reserves the right to require progress payments from the Buyer in the case of any goods not shipped from Seller's stock or in the case of services to be performed over a period of more than five (5) days from date of delivery or completion of services. The right is reserved to quote special terms for extended deliveries. All orders are subject to the approval of Seller's Credit Department. If at any time prior to delivery the financial condition of the Buyer becomes such, in the sole judgment of the Seller, as not to justify continuance of the work to be performed by Seller under the terms of payment theretofore agreed upon, or if Buyer files or has filed against if any proceeding in bankruptcy or for reorganization under the Bankruptcy Laws of the United States, is placed in receivership or into trusteeship for the benefit of creditors under the laws of any state, or becomes insolvent, Seller may, at its option, in addition to any other remedy provided by law and as a condition of proceeding with its undertaking herein, require Buyer to make full or partial payment in advance or may cancel any part of the order then outstanding and recover from Buyer or its estate all damages to which it would be entitled as though Buyer has then cancelled its order.
3. **DELIVERY** – Unless otherwise specified herein, delivery of the goods described shall be f. o. b. Seller's plant. Delivery or transfer of goods to a carrier by us shall constitute transfer of title, ownership, and possession in and to the goods, and at such point the risk of damage or loss shall pass to Buyer. If shipment is delayed at the request of Buyer or for any other reason beyond the control of Seller, delivery for purposes of determining the time of payment, the risk of damage or loss and the period of any warranty shall be deemed to take place at the time of notice by Seller to Buyer of the availability of the goods for delivery. Where such notice of availability for delivery has been made, goods held by Seller for the Buyer shall be at the risk and expense (including insurance, storage charges, and demurrage) of the Buyer.
4. **PRODUCTION AND DELIVERY DELAY, ACTS BEYOND SELLERS CONTROL** – Shipping and production promises contained herein are tentative only and do not constitute a warranty of a particular day or date of delivery. Seller shall not be liable for delays in delivery or failures to manufacture or deliver due to Buyer's failure to promptly forward all necessary information to Seller, to causes beyond Seller's control, to acts of God, to government action (civil or military) taking or pre-empting its production facilities or goods to be shipped hereunder or material or goods necessary for their manufacture, to fires, strikes, wrecks, riots, delays in transportation, freight embargoes, or severe weather, to power or fuel shortages, to existing or future laws affecting conduct of the Seller's business, or to Seller's inability to obtain necessary labor materials, or manufacturing facilities due to such causes or any other cause in any such event. Seller shall have the right, but not the obligation, to furnish suitable substitutes for material or goods that cannot be obtained as a result thereof. If any material or goods necessary for the manufacture of goods to be delivered hereunder now or hereafter becomes subject to allocation, regulation, or restriction by any government authority, Buyer shall supply the necessary preference rating certificates for the obtaining of such goods.
5. **SHIPPING QUANTITIES** – We reserve the right to ship +/- 10% of quantity ordered, unless otherwise specified on order. Where exact count is requested, a surcharge for exact count will be applicable.
6. **WARRANTIES** – Seller warrants to Buyer that at the time of the delivery of the goods described herein, it will rightfully transfer title therein to Buyer. Seller further warrants the goods sold and delivered against defects in material and workmanship for a period of one year from the date of their delivery. Any description of goods contained herein is for the sole purpose of identifying them and shall not be the basis of any bargain between Seller and Buyer and does not constitute a warranty that the goods shall conform to that description. Likewise, the use of any sample or model in connection with this sale or negotiations relating thereto is for illustrative purposes only and is not intended to be, and is not, part of the basis of any bargain between Seller and Buyer, and is not to be construed as a warranty that the goods will conform to such sample or model. No representative of Seller is authorized to make any warranty, guaranty, or representation not strictly in accordance with the terms hereof. There are not other warranties beyond those set forth herein. **SELLER MAKES NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS AGREEMENT.** Seller shall not be liable to Buyer for the breach of any warranty unless Seller receives written notice thereof within one year from the date of delivery as defined herein. Any repair or attempted repair made by any person other than Seller's authorized representatives to the goods herein described without Seller's written consent, shall relieve Seller of any liability for the expense of such repair and shall immediately and without further notice void any and all warranties made by Seller to Buyer.
7. **ACCEPTANCE OF GOODS** – Retention by Buyer in its possession of any goods shipped hereunder for a period in excess of 15 days after Buyer's receipt of them at its place of business shall constitute an irrevocable acceptance of the goods by it. Shipment on nonconforming goods by Seller in response to any order by Buyer for current shipment of stated goods as described herein and without other acknowledgement by Seller is done as an accommodation by Seller to the Buyer and shall not be considered as an acceptance by Seller of any order made by Buyer.
8. **DAMAGES AND REMEDIES** - If any goods or parts of goods delivered by Seller to Buyer are defective in such a manner as to breach any warranty or

warranties by which Seller is bound to Buyer. Seller may, at its option, either repair any such defective goods or parts of goods or make available f.o.b. Seller's plant a repair or replacement part to correct any such defect. If any factory or field test is required to prove any defect in the goods claimed by Buyer, the conditions thereof shall be mutually agreed upon between Buyer and Seller in writing and such tests shall be at Buyer's expense and at time and place of which Buyer has notified Seller, and which Seller's representatives may attend. Seller may, at its option, require allegedly defective goods or parts of goods to be delivered, freight and insurance charges prepaid, to Seller's plant for inspection prior to any replacement of repair thereof.

- In no event whether liability is based upon Seller's breach of warranty, failure to perform any agreement or part of its agreement for sale of the goods, negligence, strict liability under the laws of any state, tort, or any other cause, shall Seller be liable to Buyer or any other person except for the repair or replacement of defective or nonconforming goods or parts of goods. **SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES TO BUYER OR ANY OTHER PERSON FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OR SPECIAL DAMAGES OF ANY NATURE. THE FOREGOING SHALL CONSTITUTE THE SOLE REMEDIES OF BUYER AND THE SOLE LIABILITIES OF SELLER.**

9. **CANCELLATION** – Buyer may cancel its order only upon written notice to Seller and only subject to payment as follows:

(a) Any and all items, goods, or material that can be completed within thirty (30) days from the date of notification of the cancellation shall be completed, shipped and paid for in full and

(b) All items, goods, materials or work in process, any materials or supplies procured or for which definite commitment have been made by Seller in connection with orders, shall be paid to Seller on the basis of actual costs and overhead expenses in accordance with good accounting practices, plus 15%

As an alternative to either (a) or (b) both, Seller may elect, at its option, to have Buyer pay to Seller all damages to which Seller would be entitled as a result of the repudiation of this agreement by Buyer under the Uniform Commercial Code as interpreted by the courts of the State of Ohio.

10. **CHOICE OF FORUM AND JURISDICTION** – The parties agree that this Agreement and the obligations and duties created hereby, are to be performed in the State of Ohio. The parties herein agree that neither of them shall commence any action whatsoever, at law or in equity, for any matter or assert any claims relating to or arising from this agreement or the relationship or the parties, in any court other than those located in the County of Cuyahoga, State of Ohio, for the litigation of any claims that exist or arise between them now or in the future. The parties hereby stipulate that venue, as well as jurisdiction, is proper only in Cuyahoga County, State of Ohio.

11. **CHANGES AND SPECIFICATIONS** – Buyer will reimburse Seller for any additional costs incurred by Seller as a result of any change in drawings or specifications furnished by Buyer. Seller shall be obligated to comply with such changes in drawings and specifications only after Buyer has obtained Seller's consent thereto in placing its order. Buyer warrants to Seller that any product produced by seller in conformity with such drawings and specifications will conform to any and all standards with respect to such product which may have been lawfully established by any public authority, and as sold or used will not be hazardous to persons or property. Buyer assumes full responsibility for ordering any change in such specifications required by changes in, or additions to, such standards becoming effective before the product is completely manufactured or produced and will reimburse Seller for any additional costs incurred by it as a result of such change unless the change in particular item would not have been required except for the unexcused delay of Seller in completing its production. Buyer will indemnify Seller against, and will hold it harmless from, and liability, penalty, loss, cost, including attorney's fees, damage or expense of any nature, which may result from any claim or determination that such product so manufactured by Seller does not conform to such standards or has resulted in any injury to persons or property. The obligation of Buyer shall continue notwithstanding the fact that Seller may have known that the property did not conform to any applicable standard.

12. **MERGER, MODIFICATION AND WAIVER** – This invoice, any order of Buyer issued prior thereto, and any contracts formed between the parties shall include the terms and conditions set forth on the face and back hereof or, if Buyer has received Seller's Quotation Form, the terms and conditions thereof, and is intended by the parties as the final expression of their agreement, merging all prior negotiations and agreements, whether written or oral. The sale and shipment by the Seller of the goods covered hereby shall be conclusively deemed to be an unqualified acceptance by the Buyer of the terms and conditions hereof or, if Buyer has received Seller's Quotation Form, the terms and conditions thereof, notwithstanding any contrary or additional terms, conditions, or warranties expressed in the Buyer's purchase order or other document.

No waiver, modification, or alteration of any of the terms or conditions contained herein shall be binding upon the Seller unless accepted by Seller in writing and signed by one of Seller's authorized officers at the main office.

13. **BUYER'S PROPERTY** – Any material furnished to Seller by Buyer for the purpose of processing, finishing or otherwise working by Seller pursuant to Buyer's order shall be and remain the Buyer's property. Work on Buyer's material is completely at Buyer's risk and Seller assumes no liability whatever for spoilage or mismatching of such material. Where the Buyer furnished material and it proves defective or invokes expenses not contemplated by this document. Buyer shall reimburse Seller for all expenses involved to the discovery of the defect.
14. **ARBITRATION** – Any dispute arising between the parties hereto shall be resolved by arbitration in Cleveland, Ohio in accordance with the Rules of the American Arbitration Association, and the award of the arbitrator(s) shall be final and binding upon the parties in the event a demand for arbitration is filed pursuant hereto, the parties shall have the same rights to discover under the Ohio Rules of Civil Procedure as if the dispute had been filed as an original action in an Ohio Court of original jurisdiction, and any Court located in Cleveland, Ohio shall have jurisdiction and shall be authorized and shall be authorized to enforce said rights as if the entire dispute were pending before said Court.



## Purchase Order Terms and Conditions

All Purchase Orders issued by Cardinal Fastener & Specialty Co. Inc. will be subject to the terms and conditions herein. No terms or conditions in any acceptance, confirmation, acknowledgement or invoice from Seller, inconsistent with this Purchase Order ("P.O.") shall apply unless approved in writing by Cardinal Fastener & Specialty Co. Inc. Shipment or performance pursuant to this P.O. shall constitute acceptance of the terms and conditions set forth herein and creates a contract that shall be governed in accordance with the provisions of the Uniform Commercial Code and the laws of the State of Ohio. These terms and conditions will be applicable to the current and any subsequent Purchase Orders entered into between Cardinal Fastener & Seller.

**Delivery:** TIME IS OF THE ESSENCE. Seller will adhere to all shipping instructions contained in this P.O. Seller will submit a complete and accurate packing slip with the shipment.

**Warranties:** Seller warrants that: (i) all products covered by this P.O. will be merchantable, of good quality and workmanship free from defects, and fit and sufficient for the intended purpose for which required; (ii) all materials supplied under this P.O. are the best of the grade specified and will conform to the description, quality and performance furnished or specified by Cardinal Fastener, or if not furnished or specified, to standard commercial specifications; (iii) no materials or products provided under this P.O. are banned, misbranded or mislabeled and all goods are produced in conformity with all applicable federal, state and local statutes, rules and regulations; and (iv) on the date of completion of service, and for one (1) year thereafter, that all goods, work and services provided under this P.O. shall be good quality, workmanship, free of defects, and shall conform to or be performed in accordance with accepted industry standards. The warranties in this section shall survive delivery of goods or completion of service and shall not be waived by acceptance of products or payment. Such warranties shall cover all losses, including cost and expenses (including reasonable attorney's fees) to which Cardinal Fastener will be exposed by any defects of Seller's material or performance. These warranties will extend to Cardinal Fastener's customers and subsequent end users of such products. Cardinal Fastener will be entitled to all remedies available under applicable law, including without limitation immediate termination of any Purchase Order, repair or replacement of the product, at Cardinal's discretion, with all costs charged back to the Seller and exercise of set-off rights concerning any indebtedness owed to Cardinal by the Seller.

**Product Liability Indemnity:** Seller agrees to defend, indemnify, assume any liability, save and hold harmless Cardinal Fastener, its agents, subsidiaries, employees, customers, insurers, successors, and assigns from and against any claims, demands, suits, liabilities, penalties, losses, damages, or charges, settlements, judgments, costs, and expenses (including attorney's fees incurred), by any person arising out of or based on any alleged defect, failure, breach of warranty (express or implied), of or connected with any product covered by this P.O. or arising out of any actual or alleged violation by such products of any statute, ordinance, rule or regulation. This indemnity includes without limitation and product safety or quality control recall, corrective action or product retrofit, and any action or proceeding arising out of any of the above occurrences.

**Infringement:** Seller warrants that all products covered by this P.O. shall be delivered free of the rightful claim of any person by way of infringement, or the like; and seller agrees to defend, indemnify, and save Cardinal Fastener harmless from any and all liability, loss, damage and expense arising from any infringement or alleged infringement on any patent, trademark, copyright, trade secret, or other right, by reason of the purchase, lease, use or resale by Cardinal Fastener of any or all of the articles covered by this P.O.

**Insurance:** Seller covenants and agrees, as a condition of purchase, at its expense to provide and procure broad form vendors liability insurance coverage. This coverage shall not be canceled without Cardinal Fastener's consent and the policy limits shall be \$1,000,000 per occurrence for bodily injury and property damages with a minimum of \$3,000,000 in the aggregate.

**Confidentiality and Ownership of Plans and Drawings:** All information, including but not limited to designs, specifications, customer lists, pricing, discounts, rebates, business operations, and other informative materials furnished by Cardinal Fastener and received, obtained by or utilized by Seller in connection with Cardinal Fastener purchases is solely for the use of obtaining such purchases and is deemed confidential, and shall not be disclosed or used without Cardinal Fastener's consent. Title to all tooling, plans, drawings, prints, samples, and all other materials shall remain with Cardinal Fastener, and if requested, shall be promptly returned to Cardinal Fastener. The Seller shall indemnify Cardinal Fastener for any and all damages (including but not limited to attorney fees) resulting

from a breach of this confidentiality clause. No license or copyright privileges are granted to Seller under this P.O. and all right are expressly retained by Cardinal Fastener. This provision will be in effect during the term of the Agreement and will continue for a period of two (2) years after termination. The aforementioned requirements shall not apply to information which: a.) is within the public domain; b.) is known to other parties at time of receipt; c.) is rightfully obtained from a third party without breaching the terms of this Agreement.

**Limitation of Liability:** IN NO EVENT WILL CARDINAL FASTENER BE LIABLE FOR ANY SPECIAL INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INJURIES TO PERSON OR TO PROPERTY OR LOSS OF PROFITS OR LOSS OF FUTURE BUSINESS OR REPUTATION, WHETHER BASED ON TORT OR BREACH OF CONTRACT OR OTHER BASIS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Force Majeure:** Cardinal Fastener shall not be required to accept or pay for any goods or services covered by this P.O. if prevented from accepting and utilizing the same by reason of any labor dispute, accident, fire, casualty, act of Government, terrorism, or any other cause beyond its control.

**Insolvency and Security Interest:** Cardinal Fastener may cancel any portion of this purchase order, which remains unfilled after the beginning of any bankruptcy filing, insolvency proceeding or assignment by or against Seller. Seller grants to Cardinal Fastener a security interest in all goods, in its possession or otherwise, which have been manufactured or identified for any Cardinal Fastener order, and Seller agrees to execute, or authorize Cardinal Fastener to execute on its behalf, any documents which are necessary for Cardinal Fastener to perfect its security interest.

**Independent Contractor:** Seller and Cardinal Fastener will be independent contractors in connection with the performance of work and activities under this P.O. Seller will have no right or authority to bind Cardinal Fastener to any obligations or responsibilities and will not represent or hold itself out as an agent or representative of Cardinal Fastener.

**Termination and Survival of Obligations:** Cardinal Fastener shall have the right to terminate this P.O. in whole or in part at any time without cause by giving prior written or oral notice to Seller effective upon receipt. All of the obligations, terms, and conditions contained herein, including but limited to, indemnities and the procurement of insurance shall survive termination of this P.O. Seller shall have the right to discontinue sale of products to Cardinal Fastener upon forty-five— (45) days prior written notice, subject to any continuing obligations under this P.O.