

# The Mazel Company

## TERMS AND CONDITIONS

### 1. ACCEPTANCE

Any order for the purchase or products from Seller is subject to the terms and conditions set forth herein. Retention of the products shall constitute Buyer's agreement to these terms. There are no understandings or agreements other than as set forth herein and on the face hereof, and no additions, deletions or modifications of these terms or any matter set forth on the face hereof proposed by Buyer in its printed forms or otherwise shall bind Seller, regardless of whether such other terms would materially alter the terms hereof.

### 2. PRICES

Price are F.O.B. Seller's warehouse facility. Unless specifically otherwise set forth, prices do not include the amounts of any applicable sales use, transfer, excise or other taxes, tariffs or custom duties levied upon the sale, transfer, import or use of the products sold hereunder.

### 3. TERMS

Terms of payment, unless otherwise expressly agreed in writing, are as set forth on the face hereof, F.O.B. Seller's warehouse facility. All payments shall be made in United States currency. Payment shall not prejudice claims on account of omissions or shortages in shipment, but no such claim will be allowed unless made within ten days after receipt of the applicable shipment by Buyer.

### 4. DELIVERY

Shipping dates are approximate only, and Seller is not responsible for delays or nonperformance resulting from (a) delays in receipt of final specifications or instructions from Buyer, (b) changes in specifications, (c) force majeure, including, without limitation, strikes, labor disturbances, material shortages, nonperformance by subcontractors or suppliers, abnormal manufacturing conditions, delays or failures of carriers or communications, fire, flood, storms, accident, riot, war and invasion, governmental requisitions or priorities, acts of God, or other cases beyond Seller's reasonable control. IN NO

EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF A DELAY OR FAILURE TO DELIVER. All shipments hereunder shall be by truck at Seller's discretion, unless Buyer expressly requires in writing other means of shipment and pays any additional cost thereof. Risk of loss during shipment shall be borne by Buyer.

### 5. CANCELLATION

Orders are not subject to cancellation or modification, in whole or in part after acceptance, except with Seller's express written consent, and upon payment of a cancellation/modification charge which will cover all costs incurred by Seller. If Buyer cancels the order without Seller's express written consent, the Buyer agrees to pay all costs incurred by Seller and to compensate Seller for any loss of profits that it may suffer in the event that the Seller is unable to re-sell the products at the contract price.

### 6. "AS-IS" CONDITION/NO WARRANTY/DISCLAIMERS

Buyer acknowledges that all products purchased from Seller are "closeout" items of merchandise and may be damaged or defective. Buyer accepts all of Seller's products in "as-is, where-is" condition, with all faults. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, FOR ITS PRODUCTS, AND ALL WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED, SELLER SHALL HAVE NO LIABILITY, DIRECT OR INDIRECT, OF ANY KIND, INCLUDING LIABILITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

### 7. LIMITATIONS OF ACTIONS

ANY ACTION FOR A BREACH OF THIS AGREEMENT OR PRODUCT SHORTAGES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER DATE OF DELIVERY, NO

# The Mazel Company

## TERMS AND CONDITIONS

CLAIM OR ACTION MAY BE MADE AFTER SUCH PERIOD.

### 8. INTELLECTUAL PROPERTY INFRINGEMENT

Seller shall have no liability or responsibility with respect to any product supplied by or manufactured to the specifications of Buyer infringing any United States or foreign patent, trademark or copyright and Buyer will indemnify and save Seller harmless from any such claim or infringement, including without limitation, payment of Seller's attorneys' fees.

### 9. GOVERNING LAW; REMEDIES

The rights and obligations of the parties hereto and the construction and effect of any contract formed pursuant hereto shall be governed by the laws of the State of Ohio. If the Buyer fails to fulfill the terms of payment of any invoice or if the financial or business condition or responsibility of the Buyer shall become impaired or unsatisfactory to the Seller, the Seller reserves the right to withhold delivery of all or part of the products subject hereto, with prejudice to any other legal or equitable remedy, until past due payments are made and satisfactory assurance of payments is received. Seller shall, in addition to the rights and remedies herein set forth, be entitled to all rights and remedies provided for in the Uniform Commercial Code and other applicable law, as from time to time amended, and at equity.

### 10. INDEMNIFICATION

Buyer shall comply with and require its agents and employees to comply with all directions, safety notices, warnings and other instruction furnished by Seller, and shall use and require its agents and employees to use reasonable care in the use of the products. If Buyer fails to observe the provisions of this section, or if any injury or damage is caused, in whole or in part, by Buyer's failure to comply with applicable federal, state or local safety requirements, or any directions, safety notices, warnings or other instructions, Seller shall have no obligation to Buyer or any other person in respect thereof, and Buyer shall

indemnify and hold Seller harmless against any claims, loss or expense, including without limitation, payment or Seller's attorneys' fees, for injury or damage arising directly or indirectly from any such failure. Seller specifically disclaims any and all liability arising out of the use of the products supplied hereunder.

### 11. ARBITRATION

Any controversy or claim arising out of or related to the interpretation or enforcement of this Agreement shall be resolved by arbitration in Cleveland, Ohio in accordance with the rules of the American Arbitration Association, and the award of the arbitrator shall be final and binding upon Buyer and Seller in the event a demand for arbitration is filed pursuant hereto, the parties shall have the same rights to discovery under the Ohio Rules of Civil Procedures as if the dispute had been filed as an original action in an Ohio court of original jurisdiction and shall be authorized to enforce said rights as if the entire dispute were pending before said court. Buyer and Seller consent, agree, and submit to Ohio personal Jurisdiction.