

# **TERMS OF SALE**

These are the terms of sale between Berkshire Supply ("Seller") and the entity that is purchasing goods from Seller ("Buyer"). "Buyer" agrees that these terms of sale are applicable to the transactions between "Buyer" and "Seller", and agrees to contract with "Seller" pursuant to these terms.

## **ACCEPTANCE OF TERMS OF SALE**

No conditions stated by "Buyer" in its offer or acceptance shall be binding on "Seller" if in conflict with, inconsistent with, or in addition to, "Seller" terms. Credit is conditional upon determination by "Seller" each time an order is received. By use of our website you agree to our Legal and Privacy Policies. You certify, represent, and warrant that all purchases made by employees/agents of your organization utilizing your account number are authorized purchases of your organization. You acknowledge and agree that it is your responsibility to verify and maintain the protection, security, and distribution of your account number, user names, and passwords associated with purchasing from "Seller". Furthermore, you expressly agree that all liability relating to password management resides with you and your organization and that under no circumstances, including negligence or misconduct, shall "Seller" be liable for any damages that result from the use of our website. You acknowledge that your purchasing rights and privileges may be modified at any time upon notice from "Seller". Orders are accepted on the basis of terms of sale in effect at the time the order is received and approved by the "Seller" at "Seller's" Main Offices. Acceptance of any products delivered hereunder by "Seller" or any of its Affiliates or Assignees shall constitute "Buyer's" agreement to said Terms of Sale as set forth herein or found on our website.

## **BACKORDERS**

If merchandise is not in stock, it will be placed on backorder for 90 days. Unless we have customer authorization to hold merchandise on backorder longer than 90 days, it will automatically be cancelled and you will be notified.

## **CLAIMS**

All claims MUST be made within 5 days of receipt. To expedite service please refer to our shipper or invoice number. Damages incurred in commercial shipments must be claimed through the common carrier.

## **COMMERCIAL CREDIT ACCOUNT TERMS**

Unless otherwise agreed to in writing, upon approved credit, standard terms of payment shall be 30 Days Net. A 1-1/2% monthly service charge may be added on invoices not paid when due. Returned checks and electronic payments are subject to \$15.00 charge. If "Buyer" fails to fulfill these terms or if "Seller" at any time has any doubt as to "Buyer's" financial responsibility, "Seller" may demand immediate full payment and decline to make further deliveries. Any

indebtedness owing from "Buyer" to "Seller" can be set off and applied by "Seller" and associated companies on any indebtedness at any time from time to time either before or after maturity or demand. "Buyer"/applicant agrees to pay any collection cost incurred to collect delinquent amounts, including attorney's fees.

## **CREDIT BALANCE**

"Buyer" agrees that any credit balance issued will be applied within one (1) year of its issuance. If not applied or requested within one (1) year, any credit balance remaining will be subject to cancellation, and "Seller" shall have no further liability.

## **DAMAGED, LOST or SHORT SHIPMENTS**

**UPS, Purolator & Prepaid Truck Shipments (Berkshire carrier):** Check your order immediately upon arrival. If your shipment is damaged or short, have it noted by the carrier on the delivery receipt. Without this proper notation, you accept it at your own risk. All shortages and damages must be called into Berkshire Supply at 1-800-366-3600 or e-mailed to customerservice@BerkshireSupply.com within 5 calendar days. Keep damaged goods and containers for carrier inspection.

## **DELIVERY and FREIGHT**

**USA Shipments:** We provide same day UPS shipping for orders placed by 6:00PM E.S.T. for all in stock items at a Berkshire shipping facility. Unless otherwise stated, "Buyer" will be responsible for any freight cost associated with the delivery of product to its destination and will be pre-paid and added to Buyer's invoice. Any extra or additional charges or services rendered in transit or at the destination will be the responsibility of "Buyer". All shipments will be F.O.B our Warehouse, the Factory (as noted in the catalog), or the Vendor for items that are drop shipped. All truck shipments will ship via YRC pre-paid and added to Buyer's invoice unless otherwise specified at time of order. Shipment and delivery dates are estimates only, and are not guaranteed.

**Canadian Shipments:** We provide same day Purolator shipping for orders placed by 4:00 PM E.S.T. for all in-stock items. All orders are duty paid, customs cleared, and shipped pre-paid via Purolator. All small packages are shipped via Purolator with service based on Toronto origin. Machinery and large shipments over 150 lbs. are subject to LTL standards. We offer drop shipments to the buyer's customer with no reference to "Seller" on the packing slip or shipping label. We are restricted from shipping certain hazardous items into Canada. Items identified as HAZ57 are the only hazardous items allowed to be shipped into Canada. Other restrictions may apply. We reserve the right to select other carriers as necessary. We shall not be liable for any injury, loss, damage, or delay in delivery resulting from the handling or use of the goods after or during such delivery.

## **DISCLAIMER OF WARRANTIES**

**AS THE "SELLER" WE MAKE NO WARRANTIES, EXPRESSED OR IMPLIED, OF PERFORMANCE, MERCHANTABILITY, WORKMANSHIP, FITNESS, QUALITY, DURABILITY OR SUITABILITY OF THE MERCHANDISE IN ANY RESPECT INCLUDING ITS FITNESS FOR THE PURPOSE AND USES OF THE "BUYER". THE ONLY WARRANTIES APPLYING TO MATERIALS SOLD ARE THOSE SPECIFICALLY PROVIDED BY THE MANUFACTURER. "SELLER" FURTHER MAKES NO EXPRESS WARRANTIES OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS WITH RESPECT TO ANY CHANGES, ALTERATIONS OR MODIFICATIONS MADE IN MATERIALS AT THE REQUEST OR INSTRUCTION OF THE PURCHASER. THE OBLIGATIONS OF "SELLER" ARE LIMITED TO REPAIR OR REPLACEMENT OF DEFECTIVE PARTS OR, AT ITS SOLE OPTION, TO THE REFUND OF THE PURCHASE PRICE. "SELLER" IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL "SELLER" BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS).**

#### **INDEMNITY**

The "Buyer" shall defend and indemnify "Seller", as a result of "Buyer's" negligence, from and against any and all loss of or damage to the merchandise, usual wear and tear excepted; any claim, cause of action, damages, liability, cost or expenses (including attorney's fees) which may arise or be incurred in any manner in favor of any person relating to the merchandise or any part of the merchandise, including by way of example but not of limitation, claims arising out of or incident to the construction, purchase, delivery, installation, ownership, leasing, sale, or return of the merchandise or as a result of its use, maintenance, repair, operation or condition thereof, whether or not any claimed defects in such merchandise are latent or are discoverable; and any claim, cause of action, cost, or expense arising for alleged patent infringement of, for, or as a result of claims for alleged strict liability in tort. The obligations of "Buyer" herein contained shall survive the expiration of the Agreement as to any loss, damages, claims, causes of action liabilities, costs, or expenses.

#### **INSPECTIONS**

Any inspection of goods agreed to by the parties will be made at Seller's location, Manufacturer's plant, or other source of supply and must be made before shipment. Any goods not rejected by "Buyer" before shipment will be deemed accepted.

#### **INVENTORY**

We do our best to maintain in stock full and complete inventories of all regular lines. Close-out items may be depleted and will be replaced with other merchandise, all subject to prior sale.

#### **LIMITATION OF DAMAGES**

“SELLER’S” AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING UNDER THESE TERMS OF SALE SHALL NOT EXCEED THE TOTAL AMOUNT PAID FOR THE SPECIFIC GOODS RELATED TO THE CLAIM AGAINST “SELLER”.

### **LIMITATION OF LIABILITY**

IN NO EVENT SHALL "SELLER" BE LIABLE FOR LOSS OF PROFITS, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR OBLIGATIONS UNDER THIS AGREEMENT, NOR SHALL "SELLER" BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY, INSTALLATION, OR FURNISHING OF THE MERCHANDISE OR SERVICES BY ANY MANUFACTURER OF THE MERCHANDISE OR OTHERWISE

### **MACHINERY WARRANTY**

**“SELLER” WARRANTIES ALL NEW AMERICAN MADE MACHINERY AGAINST MANUFACTURER’S DEFECTS AND WORKMANSHIP FOR ONE (1) YEAR (PARTS AND LABOR INCLUDED). ALL FOREIGN MADE MACHINERY IS WARRANTED FOR NINETY (90) DAYS (PARTS AND LABOR INCLUDED). ELECTRICS ON ALL MACHINES ARE WARRANTED BY THE MANUFACTURER. SHOULD A PHASE CONVERTER BE USED IN CONJUNCTION WITH A MACHINE, THE WARRANTY SHALL NOT APPLY TO THE ELECTRICAL COMPONENTS AND OPERATION OF THE MACHINE. THE CUSTOMER IS RESPONSIBLE FOR SUPPLYING ADEQUATE POWER TO THE MACHINE. “SELLER” WILL REPLACE, FREE OF CHARGE, ALL PARTS FOUND TO BE DEFECTIVE AND SUBJECT TO WARRANTY (THIS DOES NOT INCLUDE NORMAL WEAR AND TEAR).**

**ANY CHANGES, ALTERATIONS, MODIFICATIONS, UNAUTHORIZED REPAIRS OR MISUSE TO MACHINES AUTOMATICALLY VOIDS THIS WARRANTY. IN NO EVENT SHALL “SELLER” BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO LOST PROFITS).**

### **NOTICE TO SUBSEQUENT PURCHASER OR REPACKER**

For imported articles, the requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container will permit, to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.

### **OSHA**

Material Safety Data Sheets (MSDS) for OSHA defined hazardous substances are available by contacting “*Seller*”, 8655 E Eight Mile Road, Warren, MI 48089. MSDS information can also be found within any product information page on our website. Any product that has an MSDS sheet will have a link to its individual sheet for download. The information and recommendations contained on the MSDS supplied by the manufacturer is considered to be

accurate and reliable. "Seller", however, makes no warranty with respect to the accuracy or reliability of the information or the suitability of the recommendations. "Seller" disclaims any and all liability to any user thereof.

## **PRICES**

**USA:** All prices are in US dollars.

**CANADIAN DOLLAR ACCOUNTS:** All prices are in Canadian Dollars.

All prices are subject to change without notice. Typographical or similar errors are subject to correction.

## **PROMOTIONAL AND ADVERTISING MATERIAL**

Customer authorizes "Seller", its affiliates or representatives, to send e-mails or faxes, of any kind, including but not limited to correspondence, promotional and advertising material, to "Buyer" or its affiliates.

## **QUOTATIONS**

Quotations are valid for 30 days.

## **RESPONSIBILITY**

The value of a defective product or material sent in error is our only liability. All technical data has been supplied by the manufacturer and is listed only as a convenience. All specifications are subject to change without notice. Photos shown in any of our advertising material, catalog and website are general representations of the various items and may include optional equipment. We do not warrant or represent that the merchandise complies with the provisions of any law, particularly including the Walsh-Healy Public Contracts Act and the Occupational Safety and Health Act of 1970, and regulations promulgated thereunder, unless the manufacturer so warrants.

## **RETURNS**

Unless we have erred, returns must be prepaid. No merchandise will be accepted for return which is made up special or which has been held for over 30 days. We reserve the right to determine if the purchaser has abused the item in question. If it cannot be returned to stock, credit will not be given. ***Returns not accompanied by a copy of shipper, invoice, or invoice number may not be accepted or subject to restocking charge. Returns due to customer error must be prepaid and are subject to restocking charge.*** Any claims for discrepancies in shipment must be made within 5 days of receipt of merchandise. **Items that cannot be returned via UPS:** Call for instructions, or e-mail customerservice@BerkshireESupply.com.

## **SAFETY**

"Buyer" will cause each person who receives or uses purchased goods to read and comply with all safety instruction provided by "Seller" and Manufacturer, including all product safety notices, warnings, instructions and training materials, manuals, or other similar safety documentation. "Buyer" will instruct each user in the proper use of the goods and implement and enforce the safety documentation. "Buyer" will be solely responsible for complying with local, state and federal or provincial laws, codes or regulations relating to safety of the workplace where the goods are used. Cutting Tools may shatter when broken. The wearing of eye protection is strongly recommended in the vicinity of their use.

### **SALES TAX/GST/HST**

"Seller" is required to charge state and local tax on items for which sales tax exemption certification have not been provided, or does not apply. When ordering, please indicate Tax exemption and provide certification, or does not apply. "Seller" is also required to charge GST (goods and services tax) / HST (harmonized sales tax) on products shipped to Canada. Should tax exemption status be determined to be invalid by the tax authority, Buyer shall be responsible to pay the tax, interest and penalty, assessed by the authority.

### **TITLE**

To secure payment and performance of all "Buyers" obligations hereunder, whether represented by commercial account or evidenced by notes, judgements or otherwise, "Seller" hereby retains title to the equipment and a security interest herein until payment in full and performance by "Buyer" of said obligations.

**TERMS OF SALE ARE SUBJECT TO CHANGE WITHOUT NOTICE.**

**Revision Date: September 27, 2017**