

# Terms & Conditions of Sale

Unless otherwise specifically stated in the offer to sell goods submitted herewith, these Terms and Conditions establish the rights, obligations and remedies of Busche Enterprise Division, Inc. ("Seller") and Buyer, which apply to this offer and any resulting order.

**1. Acceptance.** The issuance of purchase order documents against this offer shall constitute an acceptance of the offer and not a counteroffer and shall create a contract of sale (hereinafter referred to as "Contract"), subject to final credit approval and acknowledgement by Seller. Provisions contained in the purchase order documents issued against this offer which materially add to or subtract from the provisions of this offer shall not be a part of the Contract unless specifically agreed to by Seller in a written acknowledgement.

**2. Delivery, Title and Risk of Loss.** Delivery shall be FOB Seller's plant, and all costs for transportation shall be borne by the Buyer, except where otherwise indicated in the offer. Except as otherwise expressly agreed in writing by Seller, title and risk of loss of or damage or delay to the goods supplied under this Contract shall pass to Buyer when Seller delivers the goods to the carrier, which shall be designated by Buyer. Buyer shall contact Seller within seven days of receipt of all goods delivered hereunder to report any product defect or variation from specification. Buyer's failure to inspect the product within seven days of receipt, or to contact Seller within seven days to report a defect or specification variation or Buyer's use of the product or delivery to the Buyer's customer, will serve to void all warranties, expressed or implied, and waive all of Seller's liabilities for any and all injury or damage to Buyer, Buyer's Customer or any third party, caused by product defects or failure to follow product specifications.

**3. End Use.** Determination of the suitability of the goods purchased by Buyer for the use contemplated by Buyer or Buyer's customer is the sole responsibility of Buyer or Buyer's customer, whichever the case may be, and Seller shall have no responsibility in that connection. Buyer assumes all risk and liability for loss, damage or injury to property of Buyer and others arising out of the use or possession by Buyer of the goods furnished to Buyer by Seller under this Contract.

**4. Warranty and Limitation of Liability.** Except as otherwise specifically set forth herein, Seller warrants only that the goods to be supplied shall conform to the description of specifications stated in Buyer's Specifications and Buyer represents and warrants by its purchase of goods hereunder that Buyer's Specifications are true, complete and accurate in their description of Buyer's needs and Buyer acknowledges that Seller has complied with the production of goods in conformity with said Buyer's Specification. Except as otherwise specifically set forth in this Contract, **THIS WARRANTY IS IN LIEU OF ALL OTHER WRITTEN OR UNWRITTEN, EXPRESSED OR IMPLIED WARRANTIES AND SELLER EXPRESSLY DISCLAIMS ANY EXPRESSED OR IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR APPLICATION OF THE GOODS SUPPLIED.** Except as otherwise

specifically set forth in this Contract, Seller shall not be liable for any incidental or consequential damages and Buyer's exclusive remedy and Seller's sole responsibility is limited to, at Seller's option:

- 1.) Replacement or refund of the purchase price of all goods shown to Seller's satisfaction to be other than as warranted;
- 2.) Payment to Buyer not to exceed the purchase price of the specific goods for which damages are claimed.

Buyer waives all rights against Seller for any damages to its property or that of a third party, or for injury to any person, however caused, except where such damages or injury is proximately caused by the sole negligence of Seller, its agents, subcontractors, employees, or other representatives, and in no event shall Seller's total liability exceed the purchase price of the products shown to be defective.

No person is authorized to give any other warranties or to assume any other liability on the part of Seller, unless agreed to in writing by an authorized officer of Seller.