

GENERAL CONDITIONS OF SALES

1. GENERAL PROVISIONS: Comer Industries, Inc. is herein referred to as "Comer" and the customer or person or entity purchasing goods ("Products") from Comer is referred to as the "Purchaser."

These Terms and Conditions supersede all other communications, promotional material, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Comer relevant to the sale of the Products and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Products by Comer to Purchaser. Purchaser's acceptance of the Products will manifest Purchaser's assent to these Terms and Conditions.

No change, modification, rescission, discharge, or waiver of these terms and conditions shall be binding upon the Comer unless made in writing and signed on its behalf by a duly authorized representative of Comer. No conditions, usage of trade, course of dealing or performance purporting to modify, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Comer's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Purchaser, such acceptance is expressly conditional upon Purchaser's assent to any additional or different terms set forth herein. Comer reserves the right to adjust the quantities ordered to the minimum lot size established for Products for which Comer is required to acquire necessary material. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Comer in any quotation, acknowledgment or publication are subject to correction.

Comer reserves the right in its sole discretion to refuse orders.

2. PRICES: Unless otherwise specified in writing by Comer, the price quoted or specified by Comer for the Products shall remain in effect for thirty (30) days after the date of Comer's quotation or acknowledgment of Purchaser's order for the Products, whichever occurs first, provided an unconditional authorization from Purchaser for the shipment of the Products is received and accepted by Comer within such time period. If such authorization is not received by Comer within such thirty (30) day period, Comer shall have the right to change the price for the Products to Comer's price for the Products at the time of shipment. Comer shall also have the right to change prices for order already confirmed in the event of a material change in the cost of materials, labor, energy consumption or logistics. All prices are exclusive of taxes, transportation and insurance, which are to be borne by Purchaser.

3. TAXES: Any current or future tax or governmental charge (or increase in same) affecting Comer's costs of production, sale, or delivery or shipment, or which Comer is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Products, shall be for Purchaser's account and shall be added to the price.

4. TERMS OF PAYMENT: Unless otherwise specified by Comer, terms are net thirty (30) days from date of Comer's invoice in U.S. currency.

If any payment owed to Comer is not paid when due, it shall bear interest, at the prime rate fixed by Bank of America, Charlotte, North Carolina as of the date payment is due and shall accrue from the date on which it is due until it is paid. Purchaser may not apply any offset for any amounts relating to any other order. In the event Purchaser fails to make any payment when due, Comer shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Purchaser. Purchaser shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts.

Should Purchaser's financial responsibility become unsatisfactory to Comer, cash payments or security satisfactory to Comer may be required by Comer for future deliveries and for the Products theretofore delivered. If such cash payment or security is not provided, in addition to Comer's other rights and remedies, Comer may discontinue deliveries.

5. CHANGES: Purchaser may request changes or additions to the Products consistent with Comer's specifications and criteria. In the event such changes or additions are accepted by Comer, Comer may revise the price and dates of delivery.

Comer reserves the right to change designs and specifications for the Products without prior notice to Purchaser, except with respect to Products being made to order for Purchaser. Comer shall have no obligation to install or make such change in any Products manufactured prior to the date of such change.

6. CANCELLATION: Unless otherwise agreed in writing by Comer, orders under this agreement may not be canceled by Purchaser for any reason.

7. SHIPMENT AND DELIVERY: Unless specifically provide otherwise, all shipments are F.O.B. Comer's shipping point. While Comer will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Comer, all shipping dates are approximate and not guaranteed. Comer reserves the right to make partial shipments. Comer, at its option, shall not be bound to tender delivery of any Products for which Purchaser has not provided shipping instructions and other required information. If the shipment of the Products is postponed or delayed by Purchaser for any reason, Purchaser agrees to reimburse Comer for any and all storage costs and other additional expenses resulting there from. Any claims for shortages or damages suffered in transit are the responsibility of Purchaser and shall be submitted by Purchaser directly to the carrier.

Shortages or damages must be identified and signed for at the time of delivery. Purchaser shall inspect Products delivered to it by Comer immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Purchaser to give Comer notice of any claim within 30 days after receipt of such Products shall be an unqualified acceptance of such Products.

8. EXCUSE OF PERFORMANCE: Comer shall not be liable for delays in performance or for non-performance due to acts of God; acts of Purchaser; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Comer's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Comer upon notice to Purchaser in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing.

If Comer determines that its ability to supply the total demand for the Products, or to obtain material used directly or indirectly in the manufacture of the Products, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Comer may allocate its available supply of the Products or such material without obligation to acquire other supplies of any such Products or material among itself and its purchasers on such basis as Comer determines to be equitable without liability for any failure of performance which may result therefrom.

9. RETURNED PRODUCTS: Except as otherwise provided with respect to warranty defects in Section 10, advance written permission to return Products must be obtained from Comer's customer service department. Such Products must be current, unused, catalogued Products and must be shipped, transportation prepaid, to the Comer's specified return location. Returns made without proper written permission will not be accepted by Comer. Credit or exchange for such returned Products will be at the billing price or current price, whichever is lower, from which will be deducted an inspection, restocking and repacking charge and the cost of any reconditioning. Comer reserves the right to inspect Products prior to authorizing return.

10. LIMITED WARRANTY: Subject to the limitations of Section 11, Comer warrants that the Products manufactured by Comer will be free from defects in material and workmanship under normal use and regular service and maintenance for a period of twelve (12) months from the date of commissioning or 2,000 hours of service, whichever comes first, and in any case no later than twenty-four (24) months from the date of manufacture, unless otherwise specified by Comer in writing. The repair of a product within the warranty period does not extend the warranty. For Products repaired outside of the warranty period, Comer warrants those Products for a period of two (2) months from the date of commissioning or for 300 hours of service whichever comes first but in no event longer than three (3) months from the date of repair.

THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY COMER WITH RESPECT TO THE PRODUCTS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT COMER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY COMER FOR PURCHASER'S USE OR PURPOSE AND WHETHER OR NOT THE PURPOSE OR USE FOR COMER'S PRODUCTS HAS BEEN DISCLOSED TO COMER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

This warranty does not extend to any losses or damages to persons or property due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Comer's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application, non-application or incorrect application of the safety instructions contained in the use and maintenance manual or any other cause not the fault of Comer. The use and maintenance manual, complete with safety instructions, is available, depending on the type of Product, on the website www.comerindustries.com or upon request by email to info@comerindustries.com. The warranty will terminate in the event of the Purchaser's failure to pay for the Product.

To the extent that Purchaser or its agents has supplied specifications, information, representation of operating conditions or other data to Comer in the selection or design of the Products and the preparation of Comer's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Purchaser, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

This section applies to any entity or person who may buy, acquire or use the Products, including any entity or person who obtains the Products from Purchaser, and shall be bound by the limitations therein, including Section 11. Purchaser agrees to provide such subsequent transferee conspicuous, written notice of the provisions of Sections 10 and 11.

11. LIMITATION OF REMEDY AND LIABILITY:

If within the warranty period, Purchaser discovers any warranty defects and notifies Comer in writing within fifteen (15) days, Comer shall, at its option and as Purchaser's exclusive remedy, repair, correct or replace F.O.B. point of manufacture, or refund the Purchase price for, that portion of the Products found by Comer to be defective.

THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER OTHER THAN THAT PROVIDED UNDER SECTION 12 SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 10.

Failure by Purchaser to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Purchaser's claim for such defects. All costs of dismantling, reinstallation and freight and the time and expense of Comer's personnel and representatives for site travel and diagnosis under this warranty shall be borne by Purchaser unless accepted in writing by Comer. Products repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer. Purchaser assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Products, either alone or in combination with other products/components.

THE REMEDIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL COMER'S LIABILITY TO PURCHASER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY PURCHASER FOR THE SPECIFIC PRODUCTS PROVIDED BY COMER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. PURCHASER AGREES THAT IN NO EVENT SHALL COMER'S LIABILITY TO PURCHASER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

Purchaser expressly acknowledges and agrees that Comer has set its prices and entered into this agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocates the risk between Comer and Purchaser and form a basis of this bargain between the parties.

It is expressly understood that any technical advice furnished by Comer with respect to the use of the Products is given without charge, and Comer assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Purchaser's risk.

12. PATENTS: Comer shall indemnify the Purchaser from any liability the Purchaser incurs for any infringement of United States apparatus patents by the Products manufactured by Comer. The Purchaser shall indemnify Comer from any liability Comer may incur because of claims of infringement of United States process patents in the use of the Products furnished hereunder.

13. PURCHASER'S COMPLIANCE WITH LAWS: In connection with the transactions contemplated by this agreement, Purchaser is familiar with and shall fully comply with all applicable laws, regulations, rules and other requirements of the United States and of any applicable state, foreign and local governmental body in connection with the purchase, receipt, use, transfer and disposal of the Products.

14. EXPORT/IMPORT: Purchaser agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Comer and Purchaser are established or from which Products and Services may be supplied, will apply to their receipt and use. In no event shall Purchaser use, transfer, release, import, export, Products in violation of such applicable laws, regulations, orders or requirements.

15. DRAWINGS: Comer's prints and drawings (including without limitation, the underlying technology) furnished by Comer to Purchaser in connection with this agreement are the property of Comer and Comer retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Purchaser any rights or license, and Purchaser shall return all copies (in whatever medium) of such prints or drawings to Comer immediately upon request therefore.

16. ASSIGNMENT: Purchaser shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Comer, and any such assignment, without such consent, shall be void.

17. GOVERNING LAW: The validity, performance, and all other matters relating to the interpretation and effect of this agreement will only be governed by the law of the state of North Carolina. Purchaser and Comer agree that the proper venue for all actions arising in connection herewith will only be in Mecklenburg County, North Carolina and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.