

TELLING INDUSTRIES, LLC – TERMS AND CONDITIONS OF SALE (Rev. 10/14/2021)

- 1. Applicability.** These terms and conditions of sale (these "Terms") and the accompanying quote (the "Sales Quote") (collectively, this "Agreement") are the only terms which govern the sale of the goods ("Goods") by Telling Industries, LLC ("Seller") to the buyer named on this quote ("Buyer"), comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods, the terms and conditions thereof shall prevail to the extent they are inconsistent with these Terms.
- 2. Price.** Buyer shall purchase the Goods from Seller at the price[s] (the "Price[s]") set forth in the Sales Quote. Unless otherwise noted, all prices are FOB point of shipment. All Prices exclude all present or future sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer is responsible for and shall indemnify and hold Seller harmless from all such charges, costs, and taxes. Any applicable tax exemption certificates must accompany any order to which the same applies.
- 3. Payment Terms.** Buyer shall pay all invoiced amounts due to Seller net thirty (30) days. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Seller reserves the right, in its sole and absolute discretion, to require partial or full payment or other adequate assurance of payment before the Goods are manufactured or shipped if, in Seller's sole opinion, Buyer's financial condition justifies such terms. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend delivery of any Goods if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.
- 4. Delivery.** Shipping and delivery dates, if any, are approximate and are given by Seller in good faith, but are not guaranteed and are subject to availability of finished Goods. Seller is not liable for any damages caused by any delays in shipping. Unless otherwise agreed in writing, Seller shall deliver the Goods using Seller's standard methods for packaging and shipping such Goods. If for any reason Buyer fails to accept delivery of any of the Goods on the scheduled delivery date, (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods at Buyer's cost and expense (including, without limitation, storage and insurance costs). Seller's liability for any non-delivery of the Goods is limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.
- 5. Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods to Buyer. As collateral security for payment of the Price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ohio Uniform Commercial Code.
- 6. Inspection.** Buyer shall inspect the Goods within five (5) days of receipt. Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods within five (5) days of receipt and furnishes such written evidence or other documentation as required by Seller. If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, replace such Nonconforming Goods with conforming Goods or credit or refund the Price for such Nonconforming Goods. The remedies set forth in this Section are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section, all sales of Goods are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
- 7. Limited Warranty.** Seller warrants to Buyer only that the Goods will be free from material defects in material and workmanship for a period of one (1) year from the date of shipment, subject to Seller's standard manufacturing and commercial variations and practice. **SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE GOODS AND EXPRESSLY DISCLAIMS ALL OTHER IMPLIED OR EXPRESS WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.** Seller is not liable for a breach of this warranty if: (a) Buyer makes any further use of such Goods it discovered or ought to have discovered the defect; (b) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Goods; or (c) Buyer alters or repairs the Goods without the prior written consent of Seller. **SELLER'S LIABILITY IS LIMITED TO REPAIR OR REPLACEMENT, AT SELLER'S OPTION, OF ANY DEFECTIVE GOODS.** Seller is not liable for breach of this warranty unless: (y) Buyer gives written Notice of the defect, reasonably described, to Seller within seven (7) days of the time when Buyer discovers or should have discovered the defect, and (z) Buyer returns the defective Goods to Seller for repair or replacement within thirty (30) days of such Notice, with a return authorization number, obtained from Seller, clearly marked on the outside of the return container. **THE REMEDIES SET FORTH IN THIS SECTION ARE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.**
- 8. Limitation of Liability.** **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE PURCHASE PRICE FOR THE GOODS SOLD HEREUNDER.**
- 9. Termination.** In addition to any remedies provided under these Terms, Seller may terminate this Agreement with immediate effect upon written Notice to Buyer, if Buyer: (a) fails to pay any amount when due; (b) has not otherwise performed or complied with any of these Terms; or (c) becomes insolvent, files a petition for bankruptcy, or commences or has proceedings commenced against it relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
- 10. Confidentiality.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorized by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section.
- 11. Force Majeure.** Seller shall not be liable for damages or delays in performance, nor be deemed to have defaulted under or breached this Agreement, due to circumstances beyond its reasonable control, including, without limitation, (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic, or explosion; (c) war, invasion, hostilities, terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes, blockades, or tariffs; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) inability to procure or substantial increase in price of power, raw materials, or supplies; or (j) failure of performance of subcontractors and/or suppliers for similar reasons. Failure of Seller to perform for these reasons aforesaid shall not be grounds for Purchaser's cancellation of an order, but the delivery date shall be extended accordingly.
- 12. Indemnification.** Buyer shall indemnify, defend, and hold Seller harmless from any claims or liabilities asserted against Seller in connection with the manufacture, sale, delivery, repair, or use of the Goods arising in whole or in part out of or by reason of (a) failure of Buyer, its agents, employees, or customers to follow instructions, warnings, or recommendations furnished by Seller in connection with such Goods (including, without limitation, ASTM #C754, 8.1 Product Storage Standard); (b) failure of Buyer, its agents, employees, or customers to comply with all applicable laws or regulations applicable to the installation and use of the Goods (including, without limitation, all building codes and the Occupational Safety and Health Act of 1970); or (c) the negligence of Buyer, its agents, employees, or customers.
- 13. Assignment, Relationship of the Parties, and Third-Party Beneficiaries.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without Seller's prior written consent. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement creates any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party has authority to bind the other party in any manner whatsoever. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms. Without limiting the foregoing, Buyer shall not lend, resell, or otherwise convey any of the Goods without similar conditions, including this condition, being imposed on the subsequent borrower, buyer, or transferee.
- 14. Notice, Governing Law, and Venue.** All notices, request, consents, claims, demands, waivers, and other communications hereunder (each a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Quote. All Notices shall be delivered by personal delivery, prepaid overnight courier, or certified or registered mail (return receipt requested, postage prepaid). Notice is effective only upon receipt of the receiving party and if the party giving the Notice has complied with the requirements of this Section. All matters arising out of or relating to this Agreement are governed by and construed in accordance with Ohio law without giving effect to any choice or conflict of law provision or rule (whether of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the state or federal courts covering Collier County, Florida, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. **All claims with respect to the purchase or use of the Goods, whether based on breach of contract, breach of warranty, tort (including but not limited to negligence and strict liability), or otherwise must be made within twelve (12) months of accrual of the cause of action.**
- 15. Miscellaneous.** Buyer shall comply with all applicable laws, regulations, and ordinances. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates as or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement or invalidate or render unenforceable such provision in any other jurisdiction.