

LITCO INTERNATIONAL
TERMS AND CONDITIONS

THESE TERMS CONTINUE TO BE IN EFFECT FOR ALL SUBSEQUENT ORDERS UNTIL NOTIFIED IN WRITING BY LITCO OF ANY CHANGES

1. ACCEPTANCE: Any order placed with Litco International, Inc. (hereinafter called Company) shall be subject to these terms and conditions and acceptance thereof by Company shall be conditioned on Purchaser's assent to such terms and conditions, which assent shall be deemed given unless Purchaser shall expressly notify Company to the contrary prior to any performance of such order. The conditions set forth herein shall take precedence over any conditions which may appear on a Purchaser's purchase order and no terms or conditions of such form, except as expressly stated herein, shall be binding on Company. In the event a Purchaser requires that a copy of its standard purchase order be signed and returned by the Company, the Company will sign and return such purchase order with the express understanding that despite any legend or terms contained in such purchase order, such signed copy shall have no effect except as an acknowledgment that the purchase order has been received. These conditions shall be governed by and construed according to the laws of Ohio.
2. WARRANTY: THE COMPANY WARRANTS THAT THE EQUIPMENT FURNISHED BY IT SHALL CONFORM TO THE DESCRIPTION HEREIN. THE WARRANTY OBLIGATIONS OF THE COMPANY SHALL CONFORM TO AND BE LIMITED TO REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCT ONLY. NOTICE OF A DEFECTIVE PRODUCT MUST BE GIVEN WITHIN FIFTEEN (15) DAYS AFTER DELIVERY. THE DEFECTIVE PART OR PARTS SHALL BE RETURNED TO THE COMPANY FREIGHT PREPAID UNLESS OTHERWISE DIRECTED BY THE COMPANY. THIS WARRANTY SHALL BE EXCLUSIVE AND THE COMPANY MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE WARRANTY SET FORTH HEREIN. THE COMPANY'S LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES TO PURCHASER RESULTING FROM DEFECTIVE PRODUCT IN NO EVENT SHALL EXCEED THE WARRANTY GIVEN BY THE COMPANY'S SUPPLIERS. THERE IS NO WARRANTY, EXPRESS OR IMPLIED, ON USED OR RECONDITIONED PRODUCTS: THEY ARE STRICTLY SOLD IN "AS IS" CONDITION. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER.
3. PATENTS: The Company shall at its own expense defend any suit or proceeding brought against the Purchaser so far as based on a claim that any material or any part thereof, furnished hereunder constitutes as infringement of any patent of the United States, provided (1) that such materials not supplied according to Purchaser's design, (2) that such material is used as sold by Company, (3) that Purchaser shall have made all payments then due hereunder, and (4) Company is promptly notified in writing and given authority, information and assistance (at the Company's expense) for the defense of same, and the Company shall pay all damages and costs awarded therein against the Purchaser, provided that this indemnity shall not extend to any infringement based upon the combination of said material or any part thereof with other material, apparatus or thing not furnished hereunder. Company shall not be responsible for any settlement of such suit or proceeding made without its written consent. In case said material or any part thereof, is in such suit or proceeding held to constitute infringement and the use of such material or part is enjoined, the Company shall, at its sole option and at its own expense, either (a) procure for the Purchaser the right to continue using such material or part, or (b) replace same with non-infringing material or (c) modify said material to render it non-infringing, or (d) remove the material and refund the purchase price and the transportation and the installation costs thereof. The foregoing states the entire liability of the Company for patent infringement by said material or any part thereof.
4. TRANSIT: The Company's liability ceases upon making delivery to the carrier at the place of manufacture. The Company shall not be liable for losses, damages or delays in transportation.
5. TAXES: The Company's prices do not include any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, customs, inspection or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any governmental authority on or measured by any transaction between the Company and Purchaser. Consequently, in addition to the price specified, the amount of any such present or future tax, fee or charge applicable to the sale of the material hereunder shall be paid by the Purchaser. In the event Company shall be required to pay any such tax, fee or charge, Purchaser shall reimburse Company therefore, or in lieu of such payment. Purchaser shall provide the Company with an exemption certificate or other document acceptable to the authority imposing the same. Purchaser shall notify the Company of the existence and amount of any such tax, fee or charge which it shall be the Company's responsibility to collect from Purchaser and pay.
6. PAYMENT: Payments shall become due as stated on the face hereof. The Company reserves the right at any time to demand full or partial payment before proceeding with the work to be performed hereunder, if, in the sole judgment of the Company, the financial condition of Purchaser shall not justify continuance under the terms of payment specified on the face hereof. If delivery is delayed or deferred by Purchaser beyond the scheduled date, payment shall be due in full on the date when the Company is prepared to make delivery. If the work to be performed hereunder is delayed by the Purchaser, payments shall be made based on the purchase price and percentage of completion. Material held for the Purchaser shall be stored at the risk and expenses of Purchaser. If Purchaser defaults when any payment is due, or in the event of bankruptcy or insolvency of the Purchaser, or in the event any proceeding is brought by or against the Purchaser under the bankruptcy or insolvency laws, then the whole contract price shall become due and payable upon demand, or Company, at its option, without prejudice to other lawful remedies, may defer delivery or cancel any order then outstanding and shall be entitled to receive reimbursement for its reasonable and proper cancellation charges, including but not limited to the costs of any unamortized tooling and related expenses associated with custom shape and size orders.
7. DELIVERY: The progress, completion and shipping schedules specified herein are made in good faith. All progress, completion and shipping promises appearing herein, or given the Purchaser in any other manner are approximate and are based on prompt receipt of all necessary information from Purchaser and receipt by the Company of Purchaser's written purchase order. The Company shall not be liable for delays in delivery or failure to manufacture or deliver (1) due to causes beyond its reasonable control, or (2) due to acts of God, acts of the Purchaser, including but not limited to Purchaser's failure to promptly supply all necessary information, acts of government or any agency thereof, acts of public enemies, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riot, sabotage, embargo, unusually severe weather, delays in transportation or any transportation equipment shortages, or (3) inability due to causes beyond its reasonable control to obtain necessary, specified or suitable labor, materials, components or manufacturing facilities. In the event of any such delay, the Company shall have additional time within which to perform its manufacture and delivery as it may deem reasonable necessary under the circumstances and shall have the right to apportion its production among its customers in such manner as it may consider to be equitable, and the Company shall not be liable for any expense, loss, or damage that may result from such delay.
8. CANCELLATION: The Purchaser may not cancel his order for any reason whatsoever unless the Company agrees in writing. If Company agrees to Purchaser's cancellation, then Purchaser shall pay the contract price for all finished goods and the cost of all work-in-process as of midnight of the day Company agrees to the cancellation. The Company shall be entitled to receive reimbursement for its reasonable and proper cancellation charges, including but not limited to the costs of any unamortized tooling and related expenses associated with custom shape and size orders.
9. ASSIGNMENT: Except as herein expressly provided to the contrary, the provisions of this agreement are for the benefit of the parties to the contract and not for the benefit of any other person. Any assignment of any order, or any rights thereunder by the Purchaser without written consent of the Company shall be void.
10. COMPLIANCE WITH LAWS: The Company will comply with all applicable Federal laws, rules and regulations and specifically represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and the Company further represents that it will comply with the most current Executive Order and/or law pertaining to Equal Employment Opportunity.
11. CONTROLLING PROVISIONS: These terms and conditions and the terms and conditions appearing on the face of this document shall supersede any provisions, terms, and conditions contained on any confirmation order or other writing the Purchaser may give or receive, and the rights of the parties shall be governed exclusively by the provisions, terms and conditions hereof. The Company makes no representations or warranties concerning this order except such as are expressly contained herein, and this order may not be changed or modified orally. Any clause required to be included in a contract of this type, by any applicable law or administrative regulation having the effect of law, shall be deemed to be incorporated herein. Any clause required to be included in a contract of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein.
12. TOOLS, DIES, AND JIGS: All tools, dies, and jigs used in the manufacturing of the material discussed on the front side hereof is and shall always remain the sole and exclusive property of the Company.
13. COMPLETE AGREEMENT: Litco International specifically objects to and does not subject itself to the terms and conditions on any printed forms used by the Buyer in its dealing with Litco. Buyer agrees that the terms of this Agreement shall be controlling and shall not be modified or superseded by the Buyer's printed forms.
14. ERRORS: Clerical and stenographic errors are not binding and are subject to correction.
15. All Litco manufactured goods are subject to a +/- 5% overage/underage factor. Litco reserves the right to ship and invoice for a quantity which may vary up to 5% over or under the quantity specified in the purchase order, and buyer shall accept delivery and pay for such revised quantity, and the order then shall be deemed completed.