

**TELLA TOOL & MFG. CO.**

**TERMS AND CONDITIONS OF PURCHASE**

**1. SELLER'S ACCEPTANCE OF BUYER'S TERMS AND CONDITIONS OF PURCHASE.** Seller agrees that these Terms and Conditions of Purchase are incorporated in, and made a part of, this contract and each purchase order, shipping release or instruction, or other document issued by Buyer whether in written form or by electronic data interchange, relating to the goods or services to be provided by Seller pursuant to this contract (collectively this "Contract"). Seller agrees that it has read and understands these Terms and Conditions. If Seller accepts this Contract in writing or commences any of the work or services which are the subject of this Contract, Seller will be deemed to have accepted this Contract and these Terms and Conditions of Purchase in their entirety without modification. Any additions to, changes in, or modifications of this Contract (including these Terms and Conditions of Purchase) which Seller proposes are to be deemed rejected by Buyer except to the extent that Buyer expressly agrees to accept any such proposals in writing.

**2. PRICES AND DISCOUNTS.** Unless otherwise agreed, prices shall remain fixed for the duration of Buyer's order. Seller warrants that the prices of the items covered by this order are not and shall not be in excess of Seller's lowest lawful prices for comparable quantities of similar items. If Buyer has reasonable cause to believe that Seller has violated this covenant, Seller agrees that Buyer or its representatives may, upon request, audit the records of Seller for the sole purpose of establishing Seller's compliance herewith. Any discount period provided herein shall begin either upon the date of delivery at destination, or the date of mailing of invoice, whichever is later.

**3. PACKING AND SHIPMENT.** No charge will be allowed for packing or shipment unless stated on Buyer's order. Bills of lading must accompany each invoice. Orders not accompanied by packing lists will be conclusively presumed to be in the amount of Buyer's count and weight. Risk of loss and title to all goods shall pass to Buyer only upon delivery to Buyer's specified destination.

**4. CERTIFICATION.** When this order or the specifications referred to herein, requires documentation or certification, this requirement is a material requirement of this order and Seller's failure to provide such information prior to or at the time of delivery shall entitle Buyer to withhold payment until such documentation or certification is provided by Seller.

**5. WARRANTIES/PROHIBITION AGAINST EXCLUSION OF WARRANTIES.** SELLER EXPRESSLY WARRANTS TO BUYER THAT ALL MATERIALS, WORK OR GOODS COVERED BY THIS ORDER WILL (a) CONFORM TO THE SPECIFICATIONS AND OTHER DESCRIPTIONS FURNISHED BY BUYER, (b) BE FREE FROM DEFECTS IN OR CLAIMS AGAINST GOOD TITLE THERETO, (c) BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP, (d) BE MERCHANTABLE IN ALL RESPECTS, AND (e) BE FIT FOR THE PARTICULAR PURPOSE FOR WHICH BUYER INTENDS TO USE SUCH GOODS. ANY ATTEMPT BY SELLER TO EXCLUDE, LIMIT, DISCLAIM OR RESTRICT ANY OF THE FOREGOING WARRANTIES, WHETHER CONTAINED IN SELLER'S ACKNOWLEDGMENT, INVOICE OR OTHERWISE, SHALL BE NULL, VOID AND UNENFORCEABLE AGAINST BUYER IN ALL RESPECTS. BUYER SHALL NOT BE DEEMED TO WAIVE ANY WARRANTY BY REASON OF RECEIPT, ACCEPTANCE OR PAYMENT. IF BUYER SHALL GIVE SELLER NOTICE OF ANY DEFECT OR

NON-CONFORMITY WITHIN ONE YEAR FROM THE DATE OF DELIVERY, SELLER SHALL, AT NO COST TO BUYER, PROMPTLY FURNISH REPLACEMENT GOODS OR REFUND BUYER'S PURCHASE PRICE. ALL WARRANTIES SHALL RUN BOTH TO BUYER AND TO BUYER'S CUSTOMERS.

**6. DELIVERY/RELEASE SCHEDULES.** Deliveries will be made in the quantities, on the dates, and at the time specified by Buyer in this Contract or any subsequent releases or instructions Buyer issues under this Contract. Time is of the essence with respect to all delivery schedules Buyer establishes. Buyer will not be required to pay for any goods that exceed the quantities specified in Buyer's delivery schedules or to accept goods that are delivered in advance of the delivery date specified in Buyer's delivery schedules. Seller bears the risk of loss of all goods delivered in advance of the delivery date specified in Buyer's delivery schedules. If the requirements of Buyer's customers or market, economic or other conditions require changes in delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of schedule shipments without entitling Seller to a price adjustment or other compensation.

**7. VOLUME FORECASTS.** Buyer may provide Seller with estimates, forecasts or projections of its future anticipated volume or quantity requirements for goods. Seller acknowledges that any such forecasts are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts provided to Seller, including with respect to the accuracy or completeness of such forecasts.

**8. INSPECTION AND DEFECTIVE/NONCONFORMING GOODS.** All goods or work furnished by Seller shall be subject to inspection and verification of count, quality and conformity with Buyer's specifications. Buyer shall have the right to reject and return, at Seller's risk, any goods or work which fail to conform to Buyer's specifications. Alternatively, Buyer may, at Buyer's option, (a) correct or have corrected any such defect or nonconformity at Seller's expense; or (b) make an equitable adjustment to the price for such goods on account of the defect or nonconformity. Buyer's acknowledgment of receipt shall not release Seller from any liability for defects discovered after delivery. Buyer's payment to Seller shall not constitute acceptance. Any cost, expense or damages, related to nonconforming goods will be the responsibility of Seller. Seller shall reply within two (2) business days to any notification from Buyer to Seller as to nonconforming goods and shall be responsible for removing nonconforming goods from Buyer's premises F.O.B. Seller's original shipping location within five (5) business days from such notification.

**9. DELIVERY.** Time is of the essence in connection with the delivery of any goods or work released by Buyer. Seller shall advise Buyer within ten (10) days of Seller's knowledge that any delivery may be delayed. In the case of delay, Buyer may consult with Seller as to possible rescheduling and alternative sources of supply, and Buyer may, at Buyer's option, (a) cancel any open order without incurring any liability to Seller, or (b) purchase similar merchandise on the open market in such quantities as Buyer deems necessary (but not exceeding the quantities set forth in Buyer's order) and Seller shall reimburse Buyer for any difference between the price paid by Buyer and the price set forth in Buyer's order.

**10. COMPLIANCE WITH LAWS AND REGULATIONS.** Seller agrees that it will comply with all federal, state and local laws and regulations applicable to the production, sale, labeling and delivery of the goods and the performance of any work set forth herein. Seller shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and shall not maintain any segregated facilities at Seller's facilities on the basis of race, creed, color, sex or national origin. Without limiting the generality of the foregoing, Seller certifies that the materials and work performed by Seller shall be in compliance with the requirements of the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1972, all as amended, and of the regulations issued pursuant thereto. Seller shall develop and maintain affirmative action programs to employ and advance minorities and minority business enterprises, handicapped workers, disabled veterans and veterans of the Vietnam era.

**11. TAXES.** Except for any state or local sales, use or other taxes from which an exemption is available to Buyer for the purposes hereof, all prices payable by Buyer include all applicable federal, state and local taxes. Seller agrees to accept, apply and submit tax exemption certificates when supplied by Buyer, if acceptable, to the appropriate taxing authorities.

**12. TERMINATION.** (a) Buyer shall have the right to terminate this order, at any time, without cause, for Buyer's convenience. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer's instructions concerning the disposition of completed and partially completed items, work in progress and materials acquired pursuant to this order. In the event of a termination, without cause, Seller shall be reimbursed for the reasonable costs incurred by Seller prior to termination. (b) Buyer may terminate this order on five (5) days written notice to Seller, if Seller: (i) fails to perform any of Seller's obligations under this order; or (ii) demonstrates an inability to perform this order in accordance with its terms; or (iii) becomes insolvent, makes a general assignment for the benefit of creditors or files a petition under any bankruptcy act or similar statute. Upon the termination of this order, Buyer may procure, upon such terms as Buyer shall deem appropriate, goods or services similar to the goods and services so described in this order and Seller shall be liable to Buyer for any excess costs incurred by Buyer.

**13. SET OFF.** Buyer is authorized to apply any monies due Seller hereunder toward the payment of any sums which Seller or any company affiliated with Seller may now or hereafter owe to Buyer.

**14. INDEMNITY.** Seller shall at all times indemnify, save and hold harmless Buyer, its directors, officers, employees, servants, agents, shareholders, and its affiliates (each an "Indemnified Party") from and against all legal actions, claims, judgments, loss, damages, costs, liabilities, charges or expenses, including, without limitation, reasonable attorney's fees, which an Indemnified Party may incur, be liable for, suffer or sustain on account of any damage, wrong, loss, death, or injury of any kind or nature whatsoever caused by or resulting from (a) any act, breach, conduct, or omission of Seller related to or arising out of this transaction, including, without limitation, any alleged breach of warranty (whether express or implied); (b) any failure of the goods or work described herein to conform to any applicable specifications, descriptions or samples; (c) any defects in materials or workmanship; or (d) any claim or infringement of any patent in connection with the production of goods or performance of any work hereunder or the use of such goods. If

this order includes performance of services or labor on Buyer's premises, Seller agrees to provide and maintain insurance coverage until such work is completed and accepted by Buyer and to furnish upon request certificates from its insurance carriers that it is covered by insurance adequate to provide workmen's compensation, general public liability and automobile public liability coverage with limits and with companies acceptable to Buyer.

**15. SELLER'S EXCLUSIVE REMEDY/BUYER'S LIMIT OF LIABILITY.** SELLER'S SOLE AND EXCLUSIVE REMEDY AND BUYER'S ABSOLUTE LIMIT OF LIABILITY IN CONNECTION WITH ANY LAWSUIT, CLAIM OR CAUSE WHATSOEVER DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS TRANSACTION WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY OF RECOVERY SHALL IN ALL CASES BE STRICTLY LIMITED TO THE CONTRACT PRICE FOR THE MATERIALS OR WORK ORDERED BY BUYER. SELLER ACKNOWLEDGES AND AGREES THAT THE FOREGOING EXCLUSIVE REMEDY SHALL BE SELLER'S SOLE REMEDY. IN NO EVENT SHALL BUYER BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO SELLER OR ANY THIRD PARTY.

**16. ATTORNEY'S FEES.** In the event that Buyer must institute a lawsuit against Seller for any reason hereunder or if Buyer successfully defends any lawsuit instituted by Seller, then Buyer shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from Seller.

**17. NON-WAIVER BY BUYER.** No waiver of any term, provision or other condition hereof by Buyer, whether by conduct or otherwise, in any one or more instances shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition.

**18. SEVERABILITY.** If any term, covenant or condition herein, or the application thereof to any person or circumstance, shall be invalid or unenforceable, the remainder of these terms shall not be affected thereby, and all such terms, covenants or conditions shall be valid and shall be enforced to the fullest extent permitted by law.

**19. GOVERNING LAW AND VENUE.** This order shall be governed in all respects by the laws of the State of Illinois and any and all actions commenced against Buyer with respect hereto shall be filed in the state or federal court in DuPage or Cook Counties, Illinois.

**20. ENTIRE CONTRACT.** These terms and conditions constitute the entire understanding between the parties with respect to the terms governing the subject matter hereof and supersede all prior negotiations, discussions and preliminary agreements, if any. Except as set forth herein, neither party has relied upon any promise or representation made by the other or any third party as an inducement to enter into the subject transaction.