

J&L WIRE & CLOTH, LLC TERMS AND CONDITIONS OF SALE



ALL SALES ARE SUBJECT TO THESE TERMS AND CONDITIONS OF SALES ("TERMS") AND AS CONTAINED IN J&L'S INVOICE AND ARE ALSO SUBJECT TO J&L'S ACCOUNTING, CREDIT AND OTHER POLICIES AND PROCEDURES, WHICH ARE HEREBY INCORPORATED BY REFERENCE AND SUBJECT TO CHANGE.

- 1. TERMS TO GOVERN:** These Terms shall be binding upon J&L Wire & Cloth, LLC and its subsidiaries and affiliates ("Seller") and the buyer ("Buyer"). No modification, amendment or change, whether in Buyer's request for quote or proposal, purchase order or other correspondence shall obligate Seller, unless authorized in writing by Seller. Any different or inconsistent terms and conditions of sale contained in Buyer's forms, contracts or other correspondence are hereby superseded by these Terms.
- 2. ACCEPTANCE & PRICES:** Any proposal offered by Seller to Buyer is valid for thirty calendar days. Upon the expiration of that timeframe, the proposal shall expire. Thereafter, prices are subject to change. Prices are predicated on a single shipment and any partial shipments may result in additional cost to Buyer. Seller reserves the right, at any time, to withdraw a bid, quote or a price that contains an error.
- 3. PAYMENT & TAXES:** Upon approval from the accounting department of Seller, unless otherwise agreed to in writing, payment terms for Products shipped hereunder will be thirty (30) days net from the date of the invoice. Should Buyer default in the timely payment to Seller of sums due on an order, Seller is entitled to any remedies provided in these Terms or by applicable law. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of the lesser of one and one-half percent (1.5%) per month or the maximum allowable legal interest rate, along with all costs and expenses (including without limitation collection agency and/or reasonable attorneys' fees and disbursements and Court costs) incurred by Seller. Buyer is responsible for all sales, customs, or use tax imposed by any governmental agency, including, but not limited to, Federal, State, Local or international agencies payable on the transaction under any applicable statute, except those taxes due as a result of Seller's gross profits.
- 4. PERFORMANCE:** Seller shall be obligated to furnish only the Products described in the applicable purchase order or acknowledgement and agreed to in writing. The duty to perform under any order on the part of Seller and the price thereof is subject to the approval of its Accounting Department, and is contingent upon the absence of strikes, accidents, floods, act(s) of terrorism, war, fires, labor or fuel shortages, the inability to procure materials from the usual sources of supply, or upon any cause beyond the reasonable control of Seller. Upon disapproval of the Accounting Department or upon the occurrence of any such event, Seller may delay performance or, at its option, renegotiate prices, terms, and conditions of sale with Buyer. If Seller elects to renegotiate and Seller and Buyer are unable to agree on revised prices or terms, Seller may cancel without any liability. Seller may hold any order or shipment for any account, which is not current and paying within standard payment terms.
- 5. SCHEDULING, CANCELLATION, SHIPMENT & RISK OF LOSS:** Orders will not be scheduled for production until the product specifications have been received in writing, approved, and confirmed by Seller. Production schedules may not be altered inside fourteen days of the scheduled shipment date. Shipment dates are

estimates only. Freight is determined at the time of shipment and any estimates of freight cost is provided for planning purposes only and are not binding. Unless otherwise agreed to in writing in advance, shipment shall be FOB factory in St. Paul, MN with title passing to Buyer upon delivery to the carrier by Seller. Seller specifically rejects any order containing a time is of the essence clause or liquidated damage penalties for late shipments. Risk of loss, including but is not limited to loss of goods from shortages, damages or transit delays, shall pass to Buyer when the Products have been delivered to any transportation carrier. Any claims for damage to, or loss or misdelivery or damage of the Products must be indicated on the bill of lading at the time of delivery. All claims shall be filed with Seller within five days of delivery. Any changes requested by Buyer following Seller's acceptance of order must be approved by Seller in writing and may result in an increase in price deemed appropriate by Seller to recover all associated labor and material costs, including normal overhead and profit. If any portion of a Seller accepted order is cancelled by Buyer without default on the part of Seller or without Seller's written consent, Buyer shall be liable to Seller for and delays and storage fees caused by Buyer and any cancellation charges including, but not limited to, Seller's incurred costs and such profit as would have been realized by Seller from the transaction had the agreement not been breached by Buyer. Products shall not be returned except by written permission of Seller.

6. **AUTHORITY OF AGENTS:** No agent, employee or representative of Seller has the authority to bind Seller to any affirmation, representation or warranty concerning the Product sold, except for Seller's authorized agents, employees or representatives.
7. **INDEMNITY:** Seller shall protect and indemnify Buyer from and against all claims, damages, judgments and loss directly arising from infringement or alleged infringement of any United States patent by the Product delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Seller shall promptly be notified and given full opportunity to negotiate a settlement. Seller does not warrant against infringement by reason of Buyer's design of the articles or the use thereof in combination with other materials, or in the operation of any process. In the event of litigation, Buyer agrees reasonably to cooperate with Seller. All parties concerned shall be entitled, in connection with any proceeding under the provisions of this Article, to be represented by counsel at their own expense. Buyer shall defend, indemnify and hold harmless Seller from any third party personal injury, wrongful death or property damage allegedly caused in whole or in part by Buyer's negligent or intentional act(s) or breach of this Agreement. Buyer shall name Seller as an additional insured on Buyer's insurance policies and shall provide Seller with a certificate of insurance demonstrating Seller's additional insured status.
8. **LIMITED WARRANTY AND DISCLAIMER:** Seller warrants that at the time of delivery and for a period of twelve (12) months thereafter, Products will be free from material defects in material and manufacture in normal use provided that Products have been installed properly, the load is evenly and properly distributed, the Product is maintained, operated and serviced under normal conditions, and that Products have the capacities and ratings set forth in Seller's design specifications. No warranty is made against corrosion, erosion or deterioration, user negligence or abuse. At Seller's option, Seller's obligations and liabilities under this warranty are strictly limited to repair of Products or replacement of components for Products not conforming to this warranty. Limited warranty does not cover labor for replacement. Once Seller's has been notified, reviewed, and approved any warranty related work, Seller will repair or replace components as needed and ship FOB factory. No warranty or liability whatever shall attach to Seller until full payment has been received. No warranty herein extended shall apply to repair or correction of conditions arising from improper or incorrectly installed or used or maintained Products. If the Product is replaced, the replacement may not be new, but will be in good working order and at least functionally equivalent to the item or Product replaced. The replacement assumes but does not extend the warranty status of the

replaced Product. The warranty period does not start over. THIS LIMITED WARRANTY IS IMMEDIATELY VOIDED AND CANCELLED BY ANY COLLISION OR OTHER MISUSE, NEGLIGENCE, FAILURE TO FOLLOW INSTRUCTIONS, OR MANUALS OF INSTALLATION OR MAINTENANCE REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER WITH RESPECT TO THE AFFECTED PRODUCTS. THE WARRANTY AND LIABILITY SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES WHETHER IN CONTRACT, TORT, OR IN NEGLIGENCE, EXPRESSED OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. SELLER PROVIDES NO INDEPENDENT WARRANTY FOR THIRD PARTY PRODUCTS OR COMPONENTS SOLD TOGETHER OR INCORPORATED WITH SELLER'S PRODUCT(S).

9. LIABILITY DISCLAIMER: TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER'S TOTAL LIABILITY FOR CLAIMS, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT OR WARRANTY), SHALL BE LIMITED TO THE AMOUNT PAID TO SELLER BY BUYER FOR THE SPECIFIC INDIVIDUAL PRODUCT ALLEGED TO CAUSE THE DAMAGE. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, LIQUIDATED OR INDIRECT DAMAGES, BACKCHARGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, OR CLAIMS OF THIRD PARTIES) THAT MIGHT OCCUR AS A RESULT OF THE PERFORMANCE OR BREACH OF THE AGREEMENT OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.
10. ASSIGNMENT: No right or interest may be assigned by Buyer, nor may any obligation or performance delegated by Buyer without Seller's written permission. Any attempted assignment or delegation shall be void and ineffective for all purposes. Seller may assign its rights or obligations under this Agreement in the event of a merger or change of control of Seller.
11. GOVERNING LAW AND FORUM: For collection actions for non-payment only initiated by Seller, Buyer consents to jurisdiction in the Circuit Court of Hennepin County, Minnesota applying Minnesota law.
12. MISCELLANEOUS: In the event that any provision of this Agreement is held invalid by the final judgment of any court of competent jurisdiction, the remaining provisions shall remain in full force and effect as if such invalid provision had not been included herein. The waiver or failure of either party to enforce the terms of this Agreement in one or multiple instances shall not constitute a waiver of that party's rights under this Agreement with respect to other violations. The titles and headings used herein are for convenience only and do not constitute any part of this Agreement. Those sections of this Agreement specifically including sections 7, 9 and 11 or others, which by their nature are intended to survive, shall survive termination of this Agreement. The prevailing party may recover their attorney fees and reasonable out-of-pocket expenses.



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