

## McWane International Terms and Conditions of Sale

**1. ENTIRE AGREEMENT.** Each party agrees that all sales of goods ("Goods") by McWane International, a division of McWane, Inc. ("Seller") to Buyer are governed by these Terms and Conditions of Sale (the "Terms and Conditions") which supersede any other or inconsistent terms of Buyer or Seller. Each party agrees that the Terms and Conditions will also govern all sales of Goods to Buyer by any McWane, Inc. subsidiary, affiliate or division, in which case such subsidiary, affiliate or division will be the "Seller" under this Agreement (unless otherwise agreed in writing by such subsidiary, affiliate or division). Buyer acknowledges that these Terms and Conditions are subject to change from time to time and the parties agree that each sale of Goods will be governed by the version of Terms and Conditions available online at [www.mcwane.com](http://www.mcwane.com) at the time of acceptance by Seller of an order for such Goods. The Terms and Conditions and the order for Goods from Buyer and agreed by Seller ("Order") or other contract documents to which they apply constitute the entire agreement between the parties with respect to Goods ("Agreement"). All references by Seller to Buyer's specifications and similar requirements are only to describe Goods and work covered hereby and no warranties or other terms will have any force or effect. No other or inconsistent terms of Buyer, no modification, amendment or waiver to this Agreement and no cancellation, change or return of any Order under this Agreement will be binding on Seller until agreed in writing by Seller's authorized representative. Buyer may not rely on any representation, promise or term not set forth herein and Seller expressly objects to and rejects all terms not contained in this Agreement. Seller's acceptance of Orders, whether oral or written, and/or its delivery of Goods to Buyer is based on the express condition that Buyer agrees to all of these Terms and Conditions.

**2. QUOTATIONS.** Where this Agreement is used by Seller to place a bid, Seller's quotation is for prompt acceptance and Seller may change and/or withdraw without notice. Buyer's prompt acceptance of the quotation is a material term of the bid and any subsequent agreement. In cases where freight allowance is included in the quotation, Buyer is liable for any rate increase and/or additional expense over the calculated allowance resulting from compliance with Buyer's shipping instructions.

**3. DELIVERY.** Delivery terms (stated in Incoterms<sup>®</sup> 2010) are as stated on each Order. All shipping dates are approximate and any time period indicated for a shipment will not begin until receipt at Seller's plant of complete manufacturing, shipping and credit information. Tender of delivery is deemed to occur at the earliest of (A) acceptance of shipment by designated shipper, (B) allocation of Goods to Buyer at premises other than Seller's, (C) delivery to Buyer's representative or designee or (D) mailing of an invoice to Buyer. Title to Goods will pass to Buyer on tender of delivery, subject to Seller's right of stoppage in transit and to any interest of Seller reserved to secure Buyer's payment or performance, irrespective of any freight allowance or prepayment of freight. If Seller holds Goods per Buyer's instructions or because Buyer has failed to supply shipping instructions or because Seller, in its sole discretion, determines that any part of Goods should be held for Buyer's account, Seller may invoice for the Goods and Buyer agrees to make payment at the maturity of the invoice rendered. Goods invoiced and held at any location for whatever reason will be at Buyer's risk and Seller may charge for (but is not obligated to carry) insurance, storage and other expenses incident to such delay at its prevailing rates. Partial deliveries will be accepted by Buyer and paid for at Agreement prices and terms. When Buyer has declared or manifested an intention not to accept delivery, no tender will be necessary, but Seller may, at its option, give written notice to Buyer that Seller is ready and willing to deliver and such notice will constitute a valid tender of delivery. Buyer must report any shortages in shipments within three (3) calendar days of receipt of the initial shipment. Buyer may not make any deduction from any payment due hereunder by reason of loss or damage to Goods in transit. On Buyer's written request, Seller, in its sole discretion, may agree as a service to Buyer to process Buyer's claim against the carrier for any loss or damage in transit, provided that Seller receives such claim within five (5) days of delivery of the Goods. All claims must be accompanied by a delivery receipt, signed by carrier's agent at time of delivery, on which receipt the loss or damage has been noted, or such claims will be waived.

**4. PRICES; PAYMENT.** Prices and payment terms are stated on Seller's Order or invoice document. Seller may make partial shipments and payment for that portion will be due as provided on Seller's Order or invoice document based on time of shipment. If, at any time or for any reason, Seller has cause to question Buyer's ability to perform, Seller may demand such assurances of Buyer's performance as Seller deems necessary in its discretion, including payment in advance for all shipments. In the event (A) Buyer fails within ten (10) calendar days of Seller's demand to provide Seller with such assurance, or (B) Buyer is declared bankrupt or insolvent or any proceeding is brought against Buyer, voluntarily or involuntarily, under any bankruptcy or insolvency laws, or (C) Buyer fails to make payment for Goods when due, Seller may suspend its performance, cancel any Order then outstanding, receive reimbursement for its reasonable and proper cancellation charges and collect any sums due and owing, its reasonable cancellation charges and all damages resulting from Buyer's default. Additionally, if Buyer fails to make payment for Goods when due, Buyer's account will be deemed delinquent and Buyer will be liable to Seller for a service charge of eighteen percent (18%) per annum or the maximum allowed by law, whichever is greater, on any unpaid amount Buyer will be liable to Seller for all costs and expenses of collection, including court costs and reasonable attorneys' fees. Seller's prices do not include sales, use, excise or other similar taxes and Buyer agrees to pay the amount of any present or future such tax in addition to the price specified in each Order, unless Buyer, at the time of sale, provides Seller with all tax-exemption certificates required by taxing authorities.

**5. CANCELLATION, CHANGES AND RETURNS.** If Buyer properly requests a cancellation, change or return, Seller may, at its option: (A) charge Buyer for any costs Seller incurred prior to or as a result of such cancellation, change or return; (B) revise its

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prices and delivery dates to reflect such change; and/or (C) accept returned Goods for credit if, in Seller's sole discretion, it finds such Goods to be standard stock and in good condition. The credit will be, in Seller's sole discretion, either the invoice price less a percentage to be determined by Seller or the scrap value of the Goods, along with shipping and handling charges to be determined by Seller. All returned Goods must be securely packed by Buyer to ensure that returned material is not damaged during shipment.

**6. FORCE MAJEURE; DEFERRED DELIVERY.** Seller will not be liable for any expense, loss or damage resulting from delay in delivery or prevention of performance caused by any event beyond Seller's reasonable control ("Force Majeure"), including without limitation: fire; flood; storm; act of God; strike, labor dispute or labor shortage; lack of or inability to obtain materials, fuels, supplies or equipment; civil unrest or riot; accident; transportation delay or shortage; act or failure to act of Buyer or any government; or any other cause whatsoever, provided that such cause is beyond Seller's reasonable control. Seller will have such additional time for performance as may be reasonably necessary under the circumstances and may adjust the price to reflect increases occasioned by Force Majeure. Buyer's acceptance of any Goods will constitute Buyer's waiver of any claim for damages on account of any delay in delivery of such Goods. If delivery is delayed or interrupted by Force Majeure, Seller may store the Goods at Buyer's expense and risk and charge Buyer a reasonable storage rate. If Seller is delayed because it is awaiting Buyer's approval or acceptance of designs, drawings, prints or engineering or technical data, or is awaiting Buyer's approval or acceptance of Goods, Seller will be entitled to an adjustment in price equal to any increase in Seller's production costs and any other losses and expenses incurred by Seller attributable to such delays. If Buyer requests and Seller approves in writing a deferred delivery on any Order, Seller may charge Buyer for the completed portion of the Order and warehouse all completed Goods at Buyer's expense and risk of loss. As to any uncompleted portion of the Order, Seller may, at its option, cancel said uncompleted portion in accordance with Section 5 above or revise its prices and delivery schedules on the portion not completed to reflect its increased costs and expenses attributable to the delay.

**7. WARRANTY; PATENTS.** Seller warrants that Goods will be of the kind described in this Agreement and free from defects in material and workmanship under conditions of normal use. Seller reserves the right to make any modifications required by production conditions to information set forth in Seller's catalogues and advertising literature. Seller will not be liable or responsible, however, for (A) any defects attributed to normal wear and tear, erosion or corrosion, improper storage, use or maintenance or use of Goods with incompatible products, or (B) defects in any portion or part of Goods manufactured by others. If (B) above is applicable, Seller will, as an accommodation to Buyer, assign to Buyer any warranties given to it by any such other manufacturers; provided, however, that the foregoing will not extend Seller's warranty to any accessory products unless otherwise agreed to in writing by Seller. All warranties are void if Goods are modified or used in conjunction with products or accessories not manufactured or approved by Seller or which are incompatible with Goods. Any claim by Buyer with reference to Goods for any cause will be deemed waived by Buyer unless submitted to Seller in writing within ten (10) calendar days from the date Buyer discovered, or should have discovered, any claimed breach. Buyer will give Seller an opportunity to investigate. If Buyer furnishes prompt notice to Seller of any defect and an opportunity to inspect the alleged defect as provided herein, Seller will, in its sole discretion, either: (i) repair the defective or non-conforming Goods; (ii) replace nonconforming Goods, or part thereof, which are sent to Seller by Buyer within sixty (60) calendar days after receipt of the Goods at Buyer's plant or storage facilities; or (iii) if Seller is unable or chooses not to repair or replace, return the purchase price paid and cancel any obligation to pay unpaid portions of the purchase price of nonconforming Goods. In no event will any obligation to pay or refund exceed the purchase price actually paid. Repair and/or replacement as provided above will be shipped EXW (Ex-Works) Seller's facility (per Incoterms® 2010) unless otherwise agreed in writing by Seller. Buyer will prepay all transportation charges for return of Goods or part thereof to Seller, unless otherwise agreed in writing by Seller. Seller will not be responsible for any labor, removal or installation charges that may result from the above-described repair and/or replacement of any Goods. This warranty does not cover failure of any part or parts manufactured by others, failure of any part or parts from external forces, including without limitation corrosive soils, earthquake, installation, vandalism, vehicular or other impact, application of excessive torque to the operating mechanism, frost heave or other Force Majeure. Buyer's exclusive remedy and Seller's sole liability for any loss, damage, injury or expense of any kind arising from manufacture, delivery, sale, installation, use or shipment of Goods will be, at Seller's option, the remedies described above, whether based on contract, warranty, tort or any other basis of recovery whatsoever. If any claim is made against Buyer based on a claim that any Goods constitute an infringement of any U.S. Letter Patent, Buyer will notify Seller immediately. Seller may, with Buyer's assistance, if required, but at Seller's expense, conduct settlement negotiations or defense of any litigation. If any Goods are held to infringe any U.S. Letter Patent, and their use is enjoined or, if as a result of a settlement, Seller deems their continued use unadvisable and provided that Buyer has given Seller the immediate notice required above and has used Goods only in accordance with the provisions of this Agreement and has not altered or changed them in any material way, Seller will, at its option and expense, procure for Buyer the right to continue using Goods, modify Goods so that they become non-infringing, replace Goods with non-infringing Goods of substantially equal quality or replace Goods and refund the purchase price, less reasonable depreciation. The above is intended as a complete allocation of risks between the parties, including without limitation liability for patent infringement. Buyer understands that it will not be able to recover consequential damages even though it may suffer such damages in substantial amounts. Because this Agreement and the price paid reflect such allocation, this limitation will not have failed of its essential purpose even if it operates to bar recovery for such consequential damages.

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**8. LIMITATION OF LIABILITY.** THE WARRANTIES IN SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED BY LAW OR STATUTE OR ARISING FROM TRADE USAGE OR COURSE OF DEALING. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, WILL SELLER BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF USE OF GOODS OR OTHER PROPERTY OR EQUIPMENT, DAMAGE TO OTHER PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, DOWNTIME OR CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE AFORESAID DAMAGES. SELLER WILL NOT BE LIABLE AND BUYER AGREES TO INDEMNIFY SELLER FOR ALL PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LIABILITY RESULTING IN WHOLE OR IN PART FROM BUYER'S NEGLIGENCE. NO CLAIMS OF ANY NATURE, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE MAY BE BROUGHT AGAINST SELLER MORE THAN TWENTY-FOUR (24) MONTHS AFTER DELIVERY OF GOODS TO BUYER. In any contract by Buyer for resale of Goods, Buyer will effectively disclaim, as against Seller, any implied warranty of merchantability and all liability for property damage or personal injury resulting from handling, possession or use of Goods, and will exclude, as against Seller, any liability for special or consequential damages.

**9. CONTROLLING LAW; CONSENT TO VENUE; DISPUTE RESOLUTION.** This Agreement and all rights and obligations hereunder will be governed by, and construed in accordance with, the laws of the State of Alabama, U.S.A., without regard to its conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All disputes, claims or controversies (individually or collectively, a "Dispute") between Seller and Buyer arising out of or relating to this Agreement, including without limitation Disputes based on or arising from an alleged tort, will be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Disputes will be arbitrated in Birmingham, Alabama, U.S.A. Defenses based on statutes of limitation and similar doctrines will be applicable in any such proceeding, and commencement of an arbitration proceeding under this Agreement will be deemed commencement of an action for such purposes. The parties will select arbitrators in accordance with the Commercial Arbitration Rules of the AAA. The AAA will designate a panel of ten (10) potential arbitrators knowledgeable in the subject matter of the Dispute. Seller and Buyer will each designate, within thirty (30) calendar days of receipt of the list of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated will select a third arbitrator from the eight remaining candidates. No Dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person ("Collective Proceedings"). Accordingly, AAA's Supplementary Rules for Class Arbitrations will not be applicable. If this limitation on Collective Proceedings is held by a court of competent jurisdiction to be unenforceable or interpreted to not prevent a Collective Proceeding, then such action will proceed in a court of law as provided below and not arbitration. If any arbitrator renders a decision regarding the question of arbitrability of the above limitation or orders any form of Collective Proceeding, then the arbitrator has exceeded its powers under the Federal Arbitration Act. Notwithstanding the foregoing, Seller reserves the right to resolve or bring any Dispute in a court of competent jurisdiction in the state or federal courts of Alabama and the parties irrevocably agree that, except when the Dispute is arbitrated, the exclusive venue for all Disputes between the parties will be the state and federal courts of Alabama, U.S.A., to which jurisdiction each party hereby irrevocably submits. Each party waives any objection or defense that it is not personally subject to jurisdiction of the state and federal courts of Alabama, U.S.A.; that venue of the action is improper; and that the action, suit or proceeding is brought in an inconvenient forum. In addition to any other mode of service of process authorized by law, each party consents to service of process by registered or certified mail.

**10. COMPLIANCE WITH LAWS.** Each party represents and warrants, in connection with transactions contemplated by this Agreement, and any other agreement contemplated by or entered into pursuant to this Agreement, that it will comply with all applicable governmental laws, codes, regulations, orders and ordinances, including without limitation: (A) all applicable laws and regulations regarding export controls, economic sanctions, trade embargoes and anti-boycott restrictions, and all applicable anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended) and the United Kingdom Bribery Act (collectively, "Applicable International Trade and Anti-Corruption Laws"); and (B) all applicable equal opportunity requirements and laws prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age or sex in any term or condition of employment; and (C) all applicable laws and regulations addressing human trafficking and slavery. Each party acknowledges and confirms that it and its officers, directors, employees, agents, contractors, designees and/or any other party acting on its behalf (collectively "Related Parties") are familiar with the provisions of Applicable International Trade and Anti-Corruption Laws. Each party agrees to indemnify, defend and hold harmless the other party and its employees from and against any and all claims, demands, costs, penalties and fines arising in connection with any alleged breach by the indemnifying party or any of its Related Parties of this Section. Seller may terminate this Agreement in its entirety, without liability to Buyer, if Seller believes in good faith that Buyer or any of its Related Parties has violated or intends to violate this Section.

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### 11. MISCELLANEOUS.

- (A) No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section 11(A), is binding on or effective against a party unless expressly stated in writing and signed by such party's authorized representative. Each party expressly agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage and that reliance on any waiver without the other party's written consent is unreasonable. Waiver by a party of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. A party's approval or consent to any action proposed by the other will not be considered an agreement to the propriety, fitness or usefulness of the proposed action, and will not affect the proposing party's obligation to strictly comply with this Agreement and all related Orders.
- (B) Buyer may not assign this Agreement or any rights or obligations hereunder without Seller's prior written consent. Any attempted assignment in violation of this Section is void; however, this Agreement and the Terms and Conditions contained herein are enforceable against Buyer's successors and permitted assigns.
- (C) Seller's remedies in this Agreement are cumulative and in addition to any other remedies available to Seller, whether at law, equity or otherwise.
- (D) If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.
- (E) No provision of this Agreement may be construed against either party as the drafting party.
- (F) The English language version of this Agreement will govern.