

# McLanahan Corporation

## EXPORT TERMS & CONDITIONS OF SALE

### **1 PARTIES TO A LEGALLY BINDING AGREEMENT**

We, McLanahan Corporation, Hollidaysburg, PA, are extending an offer for the sale of goods and/or services to you. The particular goods and/or services being offered are described in more detail in the attached quotation. The following terms and conditions explain certain details of our offer. If you accept our offer and these terms, we will both become parties to a legally binding agreement.

### **2 OWNERSHIP OF MATERIALS WE MAY PROVIDE**

We may provide you with quotations, estimates, prints, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information, or data. Although we provide the materials and/or programs for your use, they remain our property. You promise that you will keep such materials and/or programs strictly confidential and that neither you, nor any of your employees, nor anyone else, will disclose the materials without our prior permission.

If you choose not to accept our offer or if our agreement is cancelled for any reason, we may ask you to return any materials we previously provided to you. If we ask you to return the materials, you promise to promptly return them at your own expense.

### **3 FORMATION AND CANCELLATION OF THE AGREEMENT; TERMINATION COSTS**

If you accept this quotation and offer it becomes a legally binding agreement between us. Neither of us may cancel this agreement unless we both agree in writing to cancel it. If you decide to cancel this agreement without first reaching a new written agreement with us, or if you fail to pay us any money you owe us under this agreement, or if you fail to fulfill any of your promises you made by accepting this agreement, we may treat the order as having been wrongfully terminated by you. If you terminate the order without reaching a new agreement with us first, you agree to pay us an amount to compensate us for the damages we incurred as a result of your having wrongfully terminated the order. You agree that our damages, for which you will be liable, will be calculated as the sum of:

- (a) all direct labor and materials expended by us, including an allowance for standard overhead recovery; and
- (b) any and all additional direct or incidental costs resulting from termination of the order; and
- (c) any costs incurred by us for outside services or special tooling purchased specifically for the manufacture of the goods you ordered; and
- (d) a reasonable profit on the work completed or work in progress at the time of order termination; and
- (e) the nominal administrative costs to process termination of an order.

If you refuse to pay us the damages for which you are liable, you agree that we may collect from you any incidental expenses we may incur in recovering the damages from you, including court costs, attorneys' fees, and any other incidental expenses authorized under the laws governing this agreement. Any goods for which payment has cleared, including any applicable charges for freight and packing, will be available for delivery to you. If you fail to claim the goods or accept shipment within three (3) weeks of being notified that they are available, you will be responsible for storage charges at a rate customarily charged by freight companies for demurrage based on the storage space required.

You agree that we may cancel any order or require full or partial payment in advance by you, even if you were not otherwise required to make advance payment under our agreement, if you file for bankruptcy, if your solvency is in question, or if a trustee or receiver is appointed for you.

### **4 RESPONSIBILITY FOR TAXES, DUTIES, EXCISES AND LICENSE FEES**

The amount of any and all present or future governmental, state, or municipal taxes, duties, excises, license fees and other charges applicable to goods sold or shipped will be the responsibility of the party to which those charges are applicable unless we have otherwise and specifically agreed to a different arrangement in our agreement. Unless otherwise noted ICC Incoterms 2010 will be used to define the appropriate responsibilities for payment of any taxes, duties, excises, and/or license fees.

### **5 PRICES AND TERMS OF PAYMENT**

We reserve the right to ask and expect a partial advance cash payment with any order.

Our standard terms of sale are cash in advance of shipment unless otherwise stipulated. We may stipulate payment either by lump sum or progress payment and with or without any applicable retention moneys or financial instrument.

If you offer as payment a check, note, or form of payment other than cash, such offer will not be considered a payment unless and until we are able to convert your offered form of payment into cash.

## **6 SHIPPING AND TRANSFER OF TITLE**

Our terms for the international shipment of goods shall be in accordance with ICC Incoterms 2010. Unless we agree otherwise, our standard terms shall be "*FCA Factory*", whether or not either of us contracts for common carriage of the goods. Goods sold "*FCA Factory*" are considered delivered when loaded on the first carrier. Sales and Transfer of Title shall be governed by the Laws of the United States, Carriage of Goods by Sea Act (COGSA), 46 U.S. Code §§ 30701-30707 (formerly 46 U.S. Code §§ 1300-1315), Federal Bills of Lading Act of 1916, 49 U.S. Code §§ 80101-80115 (known as the Pomerene Act). The U.N. Convention on Contracts for the Sales of Goods, 1980, applies to this agreement except where this agreement specifically includes different terms.

Under the "Pomerene Act", title shall pass upon delivery of the "bill of lading" to you, your agent or any other consignee specified by you. When the bill of lading is not provided by us (as when a customer arranges pick-up and shipping), title will pass to you when the goods are loaded on the first carrier.

Any claim for loss or damage in transit after title passes to you is your responsibility and must be pursued by you against the freight carrier. If a shipment is short or in error, we will consider correcting the problem if you contact us in writing within thirty (30) days after you received the shipment. You agree to waive any claims for liquidated and/or consequential damages for delays in delivery resulting from damage or loss in transit, for any reason, including any act, error, omission, or negligence on our part, notwithstanding that the order is shipped FCA Destination.

If you choose to delay the shipment for any reason, you assume all risks once we notify you that the equipment, machinery, or materials are ready for shipment. You will still be responsible for making all payments in accordance with the terms of this agreement regardless of when your order is shipped. If we incur any additional expenses because of a delay in shipment or changes to your order made when completing your order, you will be responsible for compensating us for such expenses.

## **7 DELAYS BEYOND OUR CONTROL; ESTIMATED SHIPPING DATES**

You agree that we may not be held responsible for any loss or damages resulting from a delay or failure to make delivery due to damages to the equipment, machinery, or materials occurring in transit, whether or not it was within our control. You agree that we will not be held responsible for any loss or damages resulting in a delay or failure to make delivery because of priorities or other regulations or orders of any governmental authority, agency, or instrumentality. You agree that we will not be held responsible for any loss or damages resulting in a delay or failure to make delivery due to a failure to obtain labor, a labor dispute, riot, civil disturbance or insurrection, fire, act of God, act of a Public enemy, or any other cause outside our control. The same will be true whether any of the events just described affected us directly or affected one or more of our suppliers or freight carriers.

You agree that we will not be held responsible if we cannot complete your order if events beyond our control occur making it impossible or commercially unreasonable for us to complete your order, including acts of God or "force majeure events," or raw material shortages.

Unless we agree otherwise, any shipment dates that we may provide to you before we actually ship your order are only best estimates based upon current shipping schedules and promises from our suppliers. You agree that any such shipment dates will not be considered fixed or guaranteed shipping dates.

## **8 PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND THIRD PARTY CLAIMS**

We warrant that any products we sell you will be delivered free of any rightful claim of any third-party for infringement of any United States patent. If you notify us promptly in writing and give us the authority to act on your behalf, we will defend you if anyone brings a suit related to infringement of a United States patent from your use of the products we sell to you in violation of this warranty. We will only provide such a defense if you provide adequate information and assistance to us and agree not to take a position adverse to us in such a suit. At our option, we may settle any such suit at our expense. We will pay all damages and costs awarded against you in such a suit so long as you have promptly notified us in writing of such suit and have provided us with the assistance and information requested above and have not taken an adverse position to us in such suit. If any product or part of a product in such a suit is held to infringe a third party's United States patent in violation of our

warranty to you, and you are no longer able to use the product as intended, we will, at our own expense and option, provide one of the following remedies to you: .

- (1) purchase on your behalf the right to continue using the product or part, or
- (2) replace the product with a non-infringing product or part, or
- (3) modify the product so that it no longer infringes the third-party's United States patent, or
- (4) take back the product and refund your original purchase price (less an allowance for reasonable depreciation for the period you used the product and any transportation costs paid separately by you).

This section states our entire liability for patent infringement by any of the products or parts of products we sell to you.

The warranty described in this section does not apply to any product or part that was manufactured to your specifications or design. The warranty described in this section also does not apply if you use any product we sold you in conjunction with any other product in a combination not intended by us as a part of this transaction if the combined uses forms the basis for the infringement of a third-party's patent. We assume no liability whatsoever where the infringing product or part we sell to you was manufactured to your specifications or design. We also assume no liability whatsoever where you use our product in combination with other products in an infringing way. You agree that you will hold us harmless against any infringement claims arising under the circumstances described in this paragraph.

## **9 LIMITED WARRANTY**

We warrant that the equipment, machinery, or materials we sold to you will be free from defects in material and workmanship, and that they will perform in accordance with the statements as outlined in your order to the extent we agreed to them in our acknowledgment of your order. However, we do not warrant component parts, which are subject to normal wear and tear or are designed to be replaced or renewed as part of the routine maintenance of the machinery. Our obligations under this Limited Warranty are limited, however, to replacing but not installing, free carrier (FCA) at our facility, the replacement part or parts in which substantial defects in material or workmanship shall appear under normal use and service within eighteen (18) months of the date of shipment. Our obligations under this Limited Warranty only apply if the machinery is kept properly maintained and is operated in accordance with our instructions and established engineering practice. Also, if you wish to make a claim under this Limited Warranty, you must notify us in writing of the existence of a defect within ten (10) days after the defect appears. At our choice, any parts replaced under this Limited Warranty become our property, and you promise that you will follow our instructions regarding the disposition of any parts that are replaced, whether that includes returning such parts to us or discarding such parts.

If the order is specified to your design, we warrant only workmanship and materials, but we accept no responsibility for equipment design.

If the equipment, machinery or materials you purchased incorporate or include any software that is our proprietary software (as opposed to software created and owned by a third party), and we have not entered into a separate license agreement with respect to your use of such software, then the warranty above will not apply, and instead we warrant, for a period of ninety (90) days from the date of delivery of the equipment, machinery or materials, that such software will substantially conform to its published specifications and that the media on which the software resides (if the software is not embedded in the equipment, machinery or materials) will be free from defects in materials and workmanship. In addition, you promise that you will only use any such proprietary software in conjunction with the equipment, machinery or materials provided by us, and then only for your internal business purposes. We make no warranty with respect to any software that is not our proprietary software that was created by a third party. In the event we enter into a separate license agreement, then the terms of this paragraph will not apply, and that separate license agreement will govern your use of the software and any warranties relating to such software will be as stated in such agreement. If you are unable to make the equipment perform as it should, you must immediately notify us by registered letter. Your letter should include a description of the difficulties you encountered with the equipment.

You promise to give us a reasonable amount of time to assist you in making the equipment work satisfactorily. You also promise to give us friendly assistance in order to make the equipment work satisfactorily. You agree that we will not be charged for, or held responsible for, any alterations or repairs made to the machinery unless you first obtained our written consent and approval in advance. If the equipment cannot be made to fulfill the warranty, we will reload the equipment on the carrier and pay the freight for returning the shipment. You promise not to hold us liable for any damages, expenses of unloading and reloading, or freight from our location to you.

**THIS LIMITED WARRANTY IS GIVEN ONLY TO YOU, AND DOES NOT EXTEND TO ANY SUBSEQUENT BUYER OR TRANSFEREE OF OUR PRODUCTS. YOU AGREE THAT UNDER NO CIRCUMSTANCES WILL**

WE BE LIABLE FOR ANY CONTINGENT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF TIME, LOSS OF GOOD WILL, LOSS OF PROFITS, ANY DAMAGE TO GOODS BEING PRODUCED, OR ANY OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE RESULTING FROM A BREAKAGE, BREAKDOWN OR MALFUNCTIONING OF ANY OF THE PRODUCTS OR EQUIPMENT SOLD TO YOU BY US.

#### **10 DISCLAIMER OF EXPRESS AND IMPLIED WARRANTY**

Except for the Limited Warranty just described, we make no express or implied warranties of merchantability, fitness, or particular purpose or warranties by affirmation, promise, description, sample, or any other type of warranty except as described in this agreement. There are no warranties extending beyond the description set forth in this agreement.

#### **11 DESIGN CHANGES**

We reserve the right to make changes in the design of any of our products. If we elect to make such changes, we are not obligated to notify you or make any changes to products we previously sold to you.

#### **12 COMPLIANCE WITH THE LAW**

You promise to comply with all laws, including the laws of the United States, applicable international law, and the laws of the destination country in connection with the purchase and use of any products we sell to you. You also agree to cooperate with us as well as with any United States government agency or instrumentality or other international or foreign governing body to assist us in complying with all applicable export control regulations. It is your responsibility to obtain all necessary approvals, permits or licenses necessary to comply with the laws of the destination country and any country through which the goods will be transported.

Our obligations to fulfill your order under this agreement are subject to the condition that fulfillment will not be in violation of any United States laws or other international laws or the laws of the destination country.

If for any reason the order cannot be fulfilled due to a failure by you to obtain proper authorization to export your order, we reserve the right to cancel the order. If the order is cancelled for this reason, you will be responsible for damages equal to the damages described above that would have been due under this agreement just as if you had elected to voluntarily terminate the order without first reaching a mutual agreement with us.

#### **13 SEVERABILITY**

If any provision of this agreement is deemed invalid, illegal, or unenforceable, the other provisions of this agreement will remain in force.

#### **14 ENTIRE AGREEMENT**

If you accept these terms and conditions, you agree that together with the quotation attached to these terms and conditions, these documents will constitute the entire agreement between us. Any prior oral or written agreements, representations, or understandings, express or implied, between us are excluded and are not a part of our agreement.

#### **15 ASSIGNMENT OF THIS AGREEMENT**

You agree that we may assign this agreement to a third party without your permission and without notifying you in advance. If we choose to assign this agreement to another party (an assignee), you agree that you will not consider us to be an agent of the assignee for any reason. If this agreement is assigned, you promise to make any future payments due under this agreement to the assignee. By accepting our offer, you waive any rights you now have or may have against us to make any defense, counterclaim, or cross complaint in the event the assignee brings legal action against you to recover for payments or to repossess the equipment, machinery, or materials. You also agree that any claims you may have against us will be independent of any action brought by the assignee against you.

You may only assign this agreement if you first obtain our prior written consent.

#### **16 GOVERNING LAW; DISPUTE RESOLUTION; SUBMISSION TO JURISDICTION**

We agree that the law of the Commonwealth of Pennsylvania will govern this agreement except in circumstances where this agreement, United States federal law or other international law provide otherwise. You promise that before you seek to bring a legal claim against us you will first attempt to negotiate in good faith a resolution to any dispute arising out of this agreement. We will have sixty (60) days to conduct such negotiations prior to you filing

suit. If we fail to achieve resolution of your dispute after negotiating in good faith, and if you decide to bring a law suit against us, you agree that such a suit may only be brought in Blair County, Pennsylvania court. If we are required for any reason to bring legal action against you, you agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania.