

WESTERN FORMS TERMS OF ENGAGEMENT

These terms and conditions, the attendant quotation or acknowledgment, and all documents incorporated by reference therein, bind Western Forms, Inc. ("Seller") and the buyer identified on the signature page hereto ("Buyer") regarding the provision of services ("Services") and/or the sale of goods ("Goods") to be provided hereunder and constitute the entire agreement ("Agreement") between Buyer and Seller regarding such sale and/or provision. These terms and conditions shall be deemed to be an integral part of all acceptances by Seller.

1. **ACCEPTANCE BY BUYER:** Acceptance by Seller of Buyer's order is expressly limited to and conditioned upon Buyer's acceptance of, and assent to, these terms and conditions of sale. Any additional, inconsistent or different terms and conditions contained in Buyer's purchase order or other documents submitted by Buyer to Seller at any time, whether before or after the date hereof, are hereby expressly rejected by Seller.
2. **PRICES:** Unless otherwise specified by Seller, Seller's price for the Goods and/or Services shall remain in effect for thirty (30) days after the date of Seller's quotation or acceptance of the order for the Goods/Services, whichever is delivered first, provided an unconditional, complete authorization for the manufacture and shipment of the Goods and/or provision of Services pursuant to Seller's standard order-processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods/Services to Seller's price in effect for the Goods/Services at the time the order is released to final manufacture. Notwithstanding any of the foregoing to the contrary, the price for Goods/Services sold by Seller, but manufactured by others, shall be Seller's price in effect at the time of shipment to Buyer. Any changes to the order or specifications requested by Buyer after acceptance by Seller must be in writing and are subject to Seller's agreement to make said changes and price increases as specified by Seller.
3. **DELIVERY AND DOCUMENTATION:** All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Cost for shipment shall be for the account of Buyer with freight prepaid. Notwithstanding any provisions to the contrary in this or other documents related to this transaction, legal title to the Goods and risk of loss thereto shall transfer to Buyer upon delivery to the freight carrier. Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Seller, they shall be provided to Buyer at Seller's price then in effect.
4. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble (including labor shortages), unavailability of materials or components, insufficient production capacity, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond Seller's reasonable control.
5. **TERMINATION AND SUSPENSION BY BUYER:** Buyer may terminate or suspend its order for any or all of the Goods/Services covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice (not less than 10 days) of such termination or suspension and reimburses Seller for all losses, damages, costs, and expenses arising from such termination or suspension.
6. **LIMITED WARRANTY:** Subject to the limitations contained in section 7, section 11 (Seller reliance on Buyer's data) and expressed herein, Seller warrants that:

- (a) the Goods manufactured or Services provided by Seller will be free from defects in materials or workmanship under normal use and care until the expiration of the applicable warranty period;
- (b) the Goods are warranted for twelve (12) months from the date of shipment by Seller;
- (c) the Services are warranted for a period of 90 days from the date of completion of the Services; and
- (d) Products purchased by Seller from a third party (e.g., baskets) for resale to Buyer shall carry only the warranty extended by the original manufacturer (including any limitation of liability by manufacturer), and Buyer agrees that Seller has no liability (and hereby waives liability against Seller) for such resale products beyond making a reasonable commercial effort to arrange for procurement and shipping of such products; *provided, however, that* in the case of third party products resold by Seller that were specifically designed and tested by Seller prior to their manufacture (e.g., certain types of scaffolding), (i) Seller warrants the third party Products shall be free from defects in design and testing (not to exceed purchase price of goods/services) and (ii) Buyer otherwise waives liability against Seller.

If Buyer discovers any warranty defects and notifies Seller thereof in writing during the applicable warranty period, Seller shall, at its option, promptly correct any errors that are found by Seller in the Services, or repair or replace F.O.B. point of manufacture that portion of the Goods found by Seller to be defective or refund the purchase price of the defective portion of the Goods/Services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable environmental conditions, accident(s), misuse, improper modification, repair, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by an authorized Seller representative. All costs of freight and the time and expenses of Seller's personnel for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Seller and can be amended only in a writing signed by an authorized representative of Seller. Except as otherwise expressly provided in the Agreement, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.

7. **LIMITATION OF REMEDY AND LIABILITY:** SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION, REPLACEMENT OR REFUND OF PURCHASE PRICE UNDER THE LIMITED WARRANTY CLAUSE IN SECTION 6. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL

AMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL.

8. **PATENTS AND COPYRIGHTS:** Subject to the limitations contained in Section 7, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Seller constitutes an infringement of a valid United States patent or copyright, and shall pay any damages awarded therein against Buyer, provided that Buyer (a) promptly notifies Seller in writing of the filing of such suit or the threat thereof, (b) permits Seller to control completely the defense or compromise of such claim of infringement, and (c) provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that the Goods manufactured by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at its sole option and expense, provide a commercially reasonable alternative, including, but not limited to, procuring for Buyer the right to continue using the Goods, replacing them with a non-infringing product or modifying them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, (i) if infringement is based upon the use of Goods in connection with goods not manufactured by Seller or in a manner for which the Goods were not designed by Seller or (ii) if the Goods were not designed by Seller or (iii) if the Goods were designed by Buyer or were modified by or for Buyer in a manner to cause them to become infringing.

9. **TAXES:** Any tax or governmental charge payable by Seller because of the manufacture, sale or delivery of the Goods, or provision of Services, may at Seller's option be added to the price herein specified. The foregoing shall not apply to taxes based upon Seller's net income.

10. **TERMS OF PAYMENT:** Unless otherwise stated in writing, payment shall be in United States of America currency against an irrevocable letter of credit. Buyer, at the time of order placement, shall establish in Seller's favor an irrevocable letter of credit confirmed by a United States bank acceptable to Seller and in a form satisfactory to Seller. All bank charges associated with the establishment of the letter of credit shall be for the account of Buyer. The conditions for payment under such letter of credit shall be satisfied by delivery by Seller to said United States bank of a non-negotiable bill of lading, together with such other documents as Seller deems appropriate. If Buyer requests Seller to arrange for transportation, insurance or forwarder services, the letter of credit must also provide for payment of such services at actual cost.

11. **BUYER SUPPLIED DATA:** To the extent that Seller has relied upon any specifications, information, representation of operating conditions, or other data or information supplied by Buyer to Seller in the selection or design of the Goods and/or provision of the Services and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise agreed upon by Seller.

12. **CONFIDENTIALITY:** Neither Buyer nor Seller shall use the other party's information except in connection with the Agreement. The information shall not be disclosed by the receiving party to third parties unless express consent is given by the disclosing party.

13. GENERAL PROVISIONS:

- (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent.
- (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement.
- (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than twelve (12) months after delivery of the Goods or provision of the Services.
- (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller.
- (e) The Agreement is formed and shall be construed, performed and enforced under the laws of the State of Missouri. Any controversy arising under the Agreement shall be determined by a court of competent jurisdiction in Kansas City, Missouri.
- (f) The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- (g) If any provision of the Agreement is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Agreement.
- (h) In the event of any litigation or legal action arising out of this Agreement, the prevailing party is entitled to a reasonable sum for their attorney's fees and court costs.
- (i) No waiver of a breach and no failure to exercise rights or remedies will constitute a waiver of any subsequent breach.
- (j) Any portion of this agreement extending beyond the completion of the sale of goods and/or services will remain in effect until fulfilled.
- (k) Buyer and Seller shall comply with all federal, state, and local laws, executive orders, codes, and regulations in connection with the Goods and/or Services.

14. CREDIT CARD PAYMENT FOR ORDERS:

To cover the rising cost of credit card processing fees, starting January 1, 2023, we will impose a 3% surcharge on payments made by credit card.

Payments made by Check or ACH continue to be at no charge to the Customer.

The undersigned have executed this Agreement as of the date set forth below.

SELLER: WESTERN FORMS, INC.

Signature: _____
By:
Title: P
Date:
Address (including Email): 6200 Equitable Road, Kansas City, MO 64120;
_____@westernforms.com

BUYER:

Signature: _____
By:
Title:
Date:
Address (including Email):

