

## **TERMS AND CONDITIONS OF SALE**

### **BEARINGS MANUFACTURING CO.**

These terms and conditions apply to all products and services provided by Bearings Manufacturing Co. ("BMC"). As used herein, all references to "products" shall include services, where appropriate.

#### **Limited warranty**

BMC warrants to Buyer that for a period of ninety (90) days after the products have been delivered to Buyer or Buyer's agent that the products will be free of defects in material and workmanship when properly installed, maintained, and operated. Buyer disclaims all other representations and warranties, either express or implied. This sole remedy for breach of this limited warranty is the repair or replacement of the products, as determined by BMC in its sole discretion. BMC's agreement to repair or replace defective products is the exclusive remedy and is expressly in lieu of any implied warranties, in law or equity, and of all other obligations and liabilities of BMC. As a condition to this remedy, Buyer shall return to BMC any product that Buyer believes is defective. BMC, however, will not be liable for normal wear and tear on any product, nor if BMC determines in its sole judgment that damage was caused due to accident, abuse, misapplication, improper mounting or remounting, improper lubrication, improper repair or alteration, neglect, excessive operating conditions, or any other defect caused by or attributable to Buyer. BMC's obligations with respect to such replacement or repair shall not include the costs of transportation, installation, adjustment, or other expenses that may arise in connection with the replacement or repair. As a condition to any subsequent resale of the products, Buyer shall cause the subsequent purchaser to agree to the limitations herein.

BUYER UNDERSTANDS AND AGREES THAT:

A) BMC MAKES NO OTHER WARRANTY, REPRESENTATION, OR INDEMNIFICATION, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. BUYER HEREBY DISCLAIMS ANY PRIOR STATEMENT, WRITTEN OR ORAL, REGARDING THE PARTIES' RELATIONSHIP, IF NOT INCORPORATED HEREIN.

B) BUYER AND ITS SUCCESSORS IN INTEREST WAIVE ALL OTHER STATUTORY AND COMMON LAW RIGHTS, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, AND BMC SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES.

C) THE LIMITATIONS AND DISCLAIMERS OF LIABILITY HEREIN SHALL BE APPLIED TO THE FULLEST EXTENT ALLOWED BY LAW.

#### **Title and risk of loss**

All products shall become the property of Buyer upon tender of delivery thereof to the carrier at BMC's facility. Buyer may specify the method of transportation for the products and the common carrier to be used. Absent such specification, BMC will ship the products by a reliable common carrier. Buyer agrees that BMC will maintain a purchase money security interest and right to recover the products until the Buyer has paid in full. Buyer agrees to do all acts necessary to perfect and maintain this security interest, including the obligation to insure the products, naming BMC as an additional insured.

#### **Right to stop delivery**

Buyer represents and warrants to BMC that it is not insolvent and this representation shall be deemed to be stated upon every order Buyer makes. If Buyer becomes insolvent before delivery of the products, Buyer agrees that it will immediately notify BMC. BMC then shall have the right to immediately stop delivery and reclaim the products under the applicable provisions of the Uniform Commercial Code.

#### Intellectual property

BMC retains all ownership, license, and other rights to patents, trademarks, copyrights, trade secrets, and other intellectual property rights related to the products and, except for the right to use the products, Buyer obtains no rights to any such intellectual property.

#### Government contracts

No government contract regulations or clauses will apply to the products or any order for products or act to bind BMC unless BMC specifically agrees in a signed writing. Buyer warrants that it will not submit any request for or order to purchase from BMC any products which Buyer knows or has reason to know will be used in the performance of a U.S. government contract or subcontract that incorporates or is subject to federal regulations expressly or by reference. Buyer agrees to indemnify, defend, and hold BMC harmless from any loss, damage, attorneys' fees, or liability of any kind that BMC incurs in connection with a breach of this paragraph.

#### Delivery dates and delays

BMC shall use commercially reasonable efforts to effect delivery on the delivery date or dates listed, if any. Delivery dates are approximate and are not guaranteed unless BMC has specifically provided a separate guarantee in writing, asserting that delivery shall unequivocally be guaranteed on a certain date. In no event will BMC be held liable for damages or expenses incurred by the Buyer due to a delay in delivery.

#### Force majeure

BMC will not be liable for nonperformance due to (a) causes beyond its reasonable control; (b) acts of God, acts of Buyer, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, quarantine restrictions, war, riot, or delays in transportation; (c) uncontrolled ability to obtain necessary labor, materials, components, or manufacturing facilities; or (d) any other commercial impracticability. The Buyer agrees to grant to BMC an extension of time for performance corresponding with the length of such delay.

#### Payment

Prices are subject to change without notice in the event of unforeseen material or operating costs increases. All payments will be made in U.S. currency. Other payment terms will be set forth in BMC's invoice or quotation. All past-due accounts will be subject to a charge of one and one-half percent (1.5%) finance charge per month on the unpaid balance, unless BMC's invoice states a different term. Buyer shall indemnify and hold BMC harmless for all of BMC's costs of collection, including attorneys' fees.

#### Right to cure

If the products do not fully comply with the agreed specifications and the Buyer rejects shipment, then BMC shall have the right to cure within a reasonable time by substituting a conforming shipment, whether or not the time for performance has passed. Buyer must reject the products within thirty (30) days of receipt.

#### Shipping; Import / export regulations

Buyer will pay all handling and similar costs from BMC's facility, including the costs of freight, insurance, export clearances, import duties, and taxes. Buyer will be "exporter of record" for shipments leaving the United States and will therefore perform all compliance and logistics functions in connection therewith and will also comply with all applicable laws, rules, and regulations. Buyer acknowledges that BMC and/or the products are subject to laws and regulations of the United States which may require licensing or authorization for export, re-export, or diversion to

certain countries. Buyer agrees that it will not participate in any diversion or other violation of United States law or regulations. Buyer agrees to hold BMC harmless and indemnify BMC for any damages related to Buyer's breach of these terms and conditions.

#### Taxes

The price of the products does not include taxes or assessments or any kind, which will be itemized separately to Buyer. Buyer will promptly pay BMC for the same.

#### Set offs / Recoupment

Buyer specifically waives all rights to offset or recoup of any amounts, which become payable under any agreement with BMC.

#### Assignment

Buyer may not assign or transfer its rights relating to BMC without prior written consent of BMC, which will not be unreasonably withheld.

#### Choice of law; Disputes

Ohio law will govern these terms and conditions in all regards. The United Nations Convention on Agreements for the International Sales of Goods will not apply to these terms and conditions. If a dispute arises, then representatives from the respective parties shall meet and attempt in good faith to resolve the dispute. If the dispute is ongoing ten (10) days after such discussions, then a party may initiate legal proceedings; provided, however, the parties agree that the only permissible forum for disputes between the parties shall be the Court of Common Pleas in Cuyahoga County, Ohio. Buyer consents to jurisdiction in such forum and waives any argument that such venue is inconvenient. If Buyer is found liable on any count of BMC's complaint or counterclaim, then BMC shall be entitled to recover reasonable attorneys' fees from Buyer incurred in connection with the dispute.

#### Modification

These terms and conditions may be modified at any time by BMC. Course of conduct will not be construed as a modification or waiver under any circumstances.

#### Entire terms and conditions

These terms and conditions contain the entire and only agreement between the parties relating to the subject matter hereof. Any document, representation, affirmation of fact, course of prior dealings, promise or condition in connection therewith, or usage of trade not specifically incorporated herein will not bind either party.

#### Severability

If any provision herein is deemed to be unenforceable, then such provision shall be severed, the unenforceable provision not having the effect of invalidating the entire terms and conditions.