

JOYCE/DAYTON CORP.
TERMS AND CONDITIONS

1. **Parties; Products.** Joyce/Dayton Corp., an Ohio corporation, will be referred to as "Seller," and the person or company to whom Seller sells Products will be referred to as "Buyer." All materials, goods, or work supplied by Seller, regardless of type, will be referred to as "Products."

2. **Applicability of Terms and Conditions.** All sales of Products by Seller are subject to these Terms and Conditions ("Terms"). By issuing a purchase order, or paying for or accepting delivery of Products, Buyer acknowledges its unconditional acceptance of these Terms. Seller hereby objects to and rejects any and all additional or contrary terms and conditions in Buyer's purchase order and in any other document issued by Buyer, none of which shall be part of any contract between Seller and Buyer or otherwise binding on Seller unless otherwise agreed in writing by an authorized representative of Seller. Reference by Seller to, or receipt, acknowledgment, or performance of, any document of Buyer by Seller shall not be deemed to be an acceptance by Seller of any additional or contrary terms therein.

3. **Price Adjustments; Payment.** (a) The prices for Products do not include any sales, use, or other taxes, unless so stated specifically. Such taxes will be added to invoice prices in those instances in which Seller is required to collect them from Buyer; provided, however, that if Seller does not collect any such taxes and is later asked by or required to pay such to any taxing authority, Buyer will promptly make such payment to Seller or, if requested by Seller, directly to such taxing authority. At Seller's option, prices may be adjusted to reflect any increase in the costs of the Products to Seller resulting from state, federal, or local legislation, or any change in the rate, charge, or classification of any carrier. Seller reserves the right to make Product prices changes at any time upon 30 days prior written notice to Buyer.

(b) Unless otherwise specified by Seller, all prices are F.O.B. Seller's factory or warehouse from which shipment is made and payment terms will be net/cash 30 days from date of invoice. Invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of eighteen percent (18%) per annum or the maximum allowable interest rate under applicable law, and Buyer shall be responsible and liable for all expenses incurred by Seller in collection, including reasonable attorneys' fees. All payments shall be made in United States dollars. Buyer shall not make any set-off deductions without Seller's written consent.

4. **Delivery Dates; Title and Risk; Shipment.** All delivery dates are approximate, and Seller shall not be responsible for any damages or losses of any kind resulting from any delay. Regardless of the manner of shipment, title to any Products and risk of loss or damage thereto shall pass to Buyer upon tender by Seller to the carrier at the factory or warehouse of Seller, except in those instances in which delivery is made by Seller's vehicles. Unless otherwise agreed by Seller, Seller may exercise its judgment in choosing the carrier and means of delivery. No deferment of shipment at Buyer's request beyond the respective dates indicated in Buyer's orders shall be made except on terms that will indemnify Seller against all loss and additional expense, including, but not limited to demurrage, handling, storage, and insurance charges.

5. **Warranty.** (a) Seller warrants its Products to be free from defects in material and workmanship under normal and proper installation and use in accordance with instructions of Seller for a period of one year from the date of shipment from Seller's factory or warehouse. Seller's liability under such warranty or in connection with any other claim relating to the Products shall be limited to, at Seller's option, the repair or replacement of, or a refund of the purchase price for, any Products or parts or components thereof which are returned to Seller freight prepaid and which are defective in material or workmanship. Products or parts or components thereof which are repaired or replaced by Seller must be returned to Buyer freight collect. Buyer may not return Products to Seller without Seller's prior written authorization. Seller makes no warranty with regard to Products, components, or parts that are not manufactured by Seller or Products that have been repaired, misused, damaged, modified, or altered by Buyer or some third party.

(b) This warranty is not intended to cover consumer products, as defined in the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. Section 2301-1, which are purchased by Buyer for purposes other than resale. If Buyer is not intending to resell the Products, and if the Products are consumer products as defined in the Magnuson-Moss Act, the foregoing warranty, but not the limitation of Seller's liability, shall be null and void.

(c) EXCEPT AS EXPRESSLY STATED ABOVE, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR OTHERWISE, OF THE PRODUCTS, OR OF ANY COMPONENTS, PARTS, OR LABOR FURNISHED BY SELLER DURING THE SALE, DELIVERY, OR SERVICING OF THE PRODUCTS.

(d) Seller is not responsible for, and the foregoing warranty does not apply to, any failure of the Products due to (i) unauthorized modifications to or use of unauthorized accessories with the Products, or (ii) Buyer's failure to follow Seller's installation, operating, or maintenance instructions. Buyer shall consult Seller prior to modifying any lift or jack component.

6. **Inspection of Products; Claims; Commencement of Actions.** (a) Buyer shall promptly inspect all Products upon delivery. No claims for shortage will be allowed unless such shortages are reported to Seller within 10 days after delivery. No other claims (including claims for alleged defects) against Seller will be allowed unless asserted in writing within 60 days after the date of shipment of the Products from Seller's factory or warehouse or, in the case of an alleged breach of warranty, within 60 days after the date within the warranty period on which the defect is or should have been discovered by Buyer.

(b) Any lawsuit or other action based upon breach of any contract between Seller and Buyer relating to the Products or upon any other claim arising out of the sale of Products by Seller to Buyer (other than an action by Seller for any amount due to Seller by Buyer) must be commenced within one year from the date of the tender of delivery by Seller to the carrier or Buyer, as applicable or, in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the warranty period on which the defect is or should have been discovered by Buyer.

7. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY PROVISION OF THESE TERMS, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCURRED BY BUYER OR BY ANY THIRD PARTY ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE, OR LOSS OF THE USE OF THE PRODUCTS OR ANY COMPONENT OR PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S WRITTEN CONSENT, REGARDLESS OF WHETHER SELLER MAY HAVE BEEN NEGLIGENT, AND REGARDLESS OF THE FORM OF ACTION, WHETHER ARISING IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF SELLER HAS KNOWLEDGE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. NOTWITHSTANDING ANY PROVISION OF THESE TERMS, IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY BUYER (WHETHER ARISING IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE) EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

8. **Force Majeure.** Seller shall not be liable for any default or delay in performance if caused, directly or indirectly, by acts of God; war; force of arms; fire; the elements; riot; labor disputes; picketing or other labor controversies; sabotage; civil commotion; accidents; any governmental action, prohibition, or regulation; delay in transportation facilities; shortage or breakdown of or inability to obtain or non-arrival of any labor, material, or equipment used in the manufacture of the Products; failure of any party to perform any contract with Seller relative to the production of the Products; or from any cause whatsoever beyond Seller's control, whether or not such cause be similar or dissimilar to those enumerated. Seller shall promptly notify Buyer of the happening of any such event of force majeure and of the contemplated effect thereof on the manufacture and delivery of the Products. Performance time shall be considered extended for a period of time equal to the time lost because of any delay which is excusable under this Section.

9. **Loss to Buyer's Property; Intellectual Property Infringement.** Seller shall not be liable for, and shall have no duty to provide insurance against, any damage or loss to any goods or materials of Buyer which are used by Seller in connection with the supply of Products by Seller to Buyer. Where any Product is manufactured from patterns, plans, drawings, or specifications furnished by Buyer, Buyer shall indemnify Seller against and save Seller harmless from all loss, damage, and expense arising out of any suit or claim against Seller for infringement of any patent, trademark, or copyright because of Seller's manufacture of such Product or because of the use or sale of such Product by any person. Upon Seller's request, Buyer shall appear in and assume the defense of the litigation.

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10. Title to Drawings, Designs and Specifications. Seller shall at all times retain title to all specifications, drawings, plans, notes, instructions, engineering notices, or technical data of Seller provided by Seller to, or otherwise coming into the hands or control of, Buyer. Buyer shall not disclose such to any party other than Seller or a party duly authorized by Seller. Upon Seller's request, Buyer shall promptly return to Seller all such documents and copies thereof.
11. Design Modifications. Seller reserves the right to make changes in the design, construction, or materials of any Products covered by Buyer's orders at any time and in any manner Seller considers necessary or advisable prior to delivery. Seller shall not be obligated to make any such changes to any Products previously sold to Buyer.
12. Further Assurances: Security Interest. (a) If Seller shall at any time doubt Buyer's financial responsibility, Seller may decline to make shipments under Buyer's orders except upon advance receipt of cash payment or security satisfactory to Seller. If Buyer fails in any way to fulfill or comply with the Terms as set forth herein, or otherwise fails to fulfill any additional conditions agreed upon by Buyer and Seller, Seller may defer further shipments until such default is corrected or cancel the contract or order and recover damages.
- (b) Buyer shall maintain each Product in good and proper operating condition, and shall provide protection and insurance required by Seller concerning any loss, damage, or destruction of any Product from the time that Seller releases such Product (or any portion thereof) to the shipping carrier until full payment has been unconditionally received by Seller. Buyer hereby grants Seller a security interest in the Products delivered to Buyer to secure any and all payment obligations of Buyer to Seller under orders or contracts for Products. Buyer authorizes Seller, in its discretion, to file UCC financing statements in order to perfect (or otherwise provide notice of) the security interests granted hereby. At Seller's request, Buyer shall execute such documentation reasonably required by Seller to perfect its security interest. In the event of dispute, neither Seller's acceptance of any payment less than the full amount owed by Buyer nor Seller's repossession of the Products shall constitute a waiver of Seller's right to collect the entire unpaid balance owed to Seller, or be deemed a satisfaction of any claim of Seller.
13. Cancellations. After acceptance by Seller, orders shall not be subject to cancellation by Buyer except with Seller's consent and upon terms that will indemnify Seller against all direct, incidental, and consequential loss or damage.
14. Assignment. Neither party may assign any of its rights or obligations under these Terms or any contract between Buyer and Seller without the prior written consent of the other except that Seller shall have the right to assign these Terms and any contracts between Buyer and Seller to any person or entity with which it is affiliated, into which it is merged, with which it is consolidated, or by which it, or all or substantially all of its assets, is acquired.
15. Compliance with Laws. Seller certifies that any Products manufactured by Seller will be produced in compliance with all applicable requirements of the following Acts and Executive Orders, if applicable to the manufacture of the Products: the Fair Labor Standards Act, the Occupational Safety and Health Act of 1970, as amended, and the standards thereunder, Executive Order 11246 on equal employment opportunity including the requirements set forth at 41 CFR Part 60, the Vietnam Era Veteran's Readjustment Assistance Act on employment of veterans including the requirements of 41 CFR Part 250, Section 503 of the Rehabilitation Act of 1973, Executive Order 11758 on employment of the handicapped, Executive Order 11625 on subcontracting to minority business enterprises, Executive Order 12138 on subcontracting to women's business enterprises, and Executive Order 11141 on discrimination based on age.
16. Equal Opportunity Clause. In the event that the Products are to be used in whole or in part for the performance of government contracts, and where the dollar value of said Products exceeds, or may in any one year exceed, \$10,000:
- "in connection with the performance of work under this contract the contractor (subcontractor) agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor (subcontractor) agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor (subcontractor) agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- The provisions of the Equal Opportunity Clause, as promulgated by Executive Order 11246 dated September 24, 1965, as amended, are incorporated herein by reference."
17. Other Rights or Remedies. Except as otherwise provided herein, any rights or remedies granted hereunder to either party shall be in addition to, and not in lieu of, any other rights or remedies of such party at law or in equity.
18. Buyer Indemnification. If Buyer requires any particular specification, design, or modification of a Product that is not part of the standard Product offered by Seller, Buyer shall indemnify, defend, and save harmless Seller against all suits at law or in equity and from all damages, claims, and demands for actual or alleged infringement of any patent because of the specification, design, or modification required by Buyer.
19. Export. If the Products are to be exported, all orders submitted by Buyer are subject to Seller's ability to obtain export licenses and other necessary papers within a reasonable period. Buyer shall furnish all Consular and Customs declarations and shall accept and bear all responsibility for penalties resulting from errors or omissions thereon. Buyer shall not export or reexport the Products or any goods or items which incorporate the Products if the export or reexport would violate the export or import laws of the United States or any other applicable jurisdiction.
20. Severability. In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.
21. Governing Law: Jurisdiction. The sale of all Products by Seller to Buyer, and any contracts in connection therewith, shall be governed by and exclusively construed in accordance with the laws of the State of Ohio, as applicable to agreements made and wholly performed therein. In the event that there is a conflict of laws, the laws of Ohio shall prevail. Buyer hereby irrevocably consents to the exclusive jurisdiction of the federal and state courts located in Montgomery County, Ohio, and agrees that venue shall be proper in Montgomery County, Ohio.
22. Quotations. Unless otherwise agreed by Seller in writing, quotations furnished by Seller are not intended as and shall not be construed as constituting an offer to Buyer. Any quotation of Seller is subject to, and shall not become binding upon Seller until, (i) actual receipt by Seller of Buyer's written order based on all the terms and conditions stated herein, without qualification, within 30 days after the date of the quotation, and (ii) Seller's written acceptance of such order at its main office in Dayton, Ohio.