

BOSS INDUSTRIAL INC. TERMS AND CONDITIONS OF SALE

1. General. These Terms and Conditions set forth the terms and conditions pursuant to which the purchaser ("Purchaser") will purchase and Boss Industrial Inc. ("Seller") will sell any Boss Industrial-brand products or other brand products ("Products").

2. Purchase Orders. All purchase orders of Purchaser shall, unless otherwise agreed in writing by Seller, be in writing and set forth the quantity of the Products desired, the specifications therefore, the desired delivery date, the price of each Product, and all other relevant information necessary to effectuate shipment of the Products by Seller. Such purchase orders shall be limited and subject to acceptance of these Terms and Conditions and no additional, inconsistent or contrary terms shall become part of this agreement or any sale of Products to Purchaser unless specifically accepted in writing by Seller.

3. Acceptance/Return. All orders for Products shall be subject to acceptance by Seller at Seller's discretion. Purchaser shall not return any Products actually delivered to Purchaser without the written consent of, and upon terms agreed to, by Seller.

4. Price. Prices shall be those in effect at the time of order entry. Prices are subject to change by Seller without notice. Seller's prices do not include sales, use, excise or similar taxes. Consequently, the amount of any present or future sales, use or other similar tax applicable to the sale or use of the Products shall be paid by Purchaser.

5. Payment/Delinquency Charge. Payment terms are net thirty (30) days from the date of Seller's invoice. Seller reserves the right to charge interest at the rate of 1.5% per month (but not more than the maximum percentage permitted by law) on all balances not paid by Purchaser within the designated net terms.

6. Delivery and Freight Charges. All delivery dates are approximate and based upon the prompt receipt of all necessary information from Purchaser. Unless otherwise instructed, Seller will ship Products to Purchaser via its choice of a common carrier, Ex Works (EXW) Seller's facility. Notwithstanding anything contained herein, Seller shall not be responsible or liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from delay's in delivery of the Products for any reason whatsoever. All freight charges are stated on Seller's invoices and are part of Seller's payment terms.

7. Warranty. Seller warrants that the Products sold hereunder will be free from defects in material and workmanship for a period of two (2) years for residential use and ninety (90) days for commercial use from the date of shipment from Seller's facility. SELLER'S WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF SELLER AND THE MANUFACTURER OF THE PRODUCTS (COLLECTIVELY, "Manufacturing and Selling Parties"), WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL SELLER OR THE MANUFACTURING AND SELLING PARTIES BE LIABLE (AND PURCHASER SHALL NOT ASSERT ANY CLAIM) FOR SPECIAL, INCIDENTAL, COMPENSATORY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS. PURCHASER'S SOLE AND EXCLUSIVE REMEDIES UNDER THIS WARRANTY SHALL BE LIMITED, AT SELLER'S EXCLUSIVE DISCRETION, TO: (1) REPLACEMENT OF ANY DEFECTIVE PRODUCTS OR PART THEREOF; (2) REPAIR OF ANY DEFECTIVE PRODUCTS OR PART THEREOF; OR (3) RETURN OF THE PURCHASE PRICE FOR ANY DEFECTIVE PRODUCT OR PART THEREOF. The warranty and remedy set forth above are conditioned upon the proper storage, use and maintenance of the Products and conformance with all applicable recommendations of the Manufacturing and Selling Parties with respect to the Products. No agent, employee or representative of Seller (or any distributor, dealer or sales representative of Seller) has the authority to bind Seller to any affirmation, representation or warranty concerning the Products sold hereunder, and unless such affirmation, representation or warranty is specifically included in these Terms and Conditions, it will not form a part of the basis of these Terms and Conditions and shall in no way be binding upon the Seller or enforceable by Purchaser.

8. Patent Infringement. Seller's liability for patent infringement (and the liability of the Manufacturing and Selling Parties) is limited to Seller's defense of any suit or proceeding brought against Purchaser based on a claim that the Products sold hereunder, when employed in the manner intended by Seller, constitutes an infringement of any patent of the United States. If Purchaser's use of the Products in the manner intended

by Seller is finally enjoined, Seller shall, at its option, procure for Purchaser the right to continue using the Products, replace the same with non-infringing Products, modify the Products so that they become non-infringing, but equivalent to the Products sold hereunder, or refund the purchase price (less allowance for use, damage or obsolescence). Seller makes no warranty against patent infringement resulting from portions of the Products made to Purchaser's specifications or the use of Products in combination with any other Products or in the practice of any process and if a claim, suit or action against the Manufacturing or Selling Parties is based thereon, Purchaser shall defend, indemnify and save Seller and the Manufacturing and Selling Parties harmless from and against any and all claims, losses or damages arising therefrom.

9. Dispute Resolution.

The parties agree that all litigation arising out of this Agreement, the purchase or sale of Products and/or the relationship of the parties shall be filed exclusively in the State or Federal courts located in DuPage County, Illinois, and the parties further agree to submit to the personal jurisdiction of Illinois in all such litigation. Any and all claims by Purchaser arising out of or related to the Products must be filed within one (1) year of delivery of such Products and shall thereafter forever be barred.

10. Force Majeure. Seller's obligations hereunder are subject to, and Seller shall not be held responsible for, any delay or failure to make delivery of all or any part of the Products due to acts or circumstances beyond the control of Seller, including, but not limited to, labor difficulties, fires, casualties, accidents, acts of God, transportation difficulties, inability to obtain Products, materials or components or qualified labor sufficient to timely perform part or all of any obligation, or governmental regulations or actions. In the event of the occurrence of any of the foregoing, at the option of Seller, Seller shall be excused from the performance hereunder or the performance of the Seller shall be correspondingly extended.

11. Miscellaneous.

(a) These Terms and Conditions constitute the entire agreement between Seller and Purchaser as it relates to the purchase and sale of Products to Purchaser by Seller and the liability of the Manufacturing and Selling parties, and supersede any and all prior agreements, correspondence, quotations or understandings heretofore enforced between the parties relating to the subject matter hereof.

(b) If any term or condition or part of these Terms and Conditions is held invalid, the remaining terms and conditions hereof shall not be affected thereby.

(c) This agreement and any sale of Products to Purchaser shall be deemed to have been made in and governed by the substantive laws of the State of Illinois, without regard to choice-of-law provisions. The parties agree to opt out of the United Nations Convention on Contracts for the International Sale of Goods, which shall have no application to any transaction performed hereunder.

(d) Any failure by either party to enforce at any time any term or condition hereof shall not be considered a waiver of such party's right thereafter to enforce the same or any other term or condition hereof.

(e) These Terms and Conditions shall be binding upon the successors and legal representatives of Purchaser and Seller.

(f) All confidential information including Seller's dealer pricing, including but not limited to, Dealer Price Program information, shall be kept confidential and maintained in confidence by Buyer and shall not be disclosed to any third party without the expressed written consent of Seller.

12. Security Interest. To secure any indebtedness due and owing from Purchaser from time to time, Purchaser hereby grants to Seller, and Seller hereby reserves unto itself, a continuing purchase money security interest in any and all Boss Industrial-brand products tools and other products heretofore or hereafter sold or delivered to Purchaser by Seller, and all related parts, components and accessories therefor, and all proceeds arising from the sale or other disposition of the foregoing, including, but not limited to, cash, accounts, contract rights, accounts receivable, instruments and chattel paper. Purchaser shall at no time grant any security interest in conflict with that granted to Seller herein. Purchaser shall cooperate in the preparation, signing and filing of financing statements necessary to evidence and perfect Seller's security interest as described above.